



**SELECTED LEGISLATION**  
from the  
**2008 First Extraordinary Session**  
and the  
**2008 Regular Session**  
of the  
Louisiana Legislature

**Prepared by**

**House Legislative Services  
Louisiana House of Representatives  
August 20, 2008**



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## 2008 REGULAR SESSION

### **I. CIVIL LAW AND PROCEDURE**

#### **A. SUBSTANTIVE, LIABILITY, AND DAMAGES**

##### **1. Mills (HB 53)**

**Act No. 480**

Retains the existing **limitation of liability** for death, injury, or destruction to property resulting from the rendering of **health care services**, first aid, or emergency services to a person injured in a **disaster area** as a result of the emergency, and extends the limitation to services rendered anywhere in the state, provided the injury death, or damage involves the person receiving the care.

Effective August 15, 2008. (Amends R.S. 29:735.2(A))

##### **2. Chaisson (SB 301)**

**Act No. 538**

Provides that during a **declared state of emergency**, medical personnel who render or fail to render **emergency care**, health care services, or first aid, shall **not be liable** for any civil damages as a result of an evacuation or treatment or failed evacuation or treatment conducted in accordance with disaster medicine protocol and at the direction of military or government authorities, unless such damage or injury was caused by willful and wanton misconduct.

Effective June 30, 2008. (Adds R.S. 29:735.3)

##### **3. Chaisson (SB 330)**

**Act No. 539**

Provides that **medical personnel** who, in good faith and regardless of compensation, render or fail to render services during a **declared state of emergency**, when the state of emergency affects the ability to render care, shall **not be liable** for any civil damages or injury as a result of any act or omission, unless the damages or injury was caused by gross negligence or willful and wanton misconduct.

Effective June 30, 2008. (Adds R.S. 37:1731.1)

##### **4. Anders (HB 633)**

**Act No. 591**

Provides that an **agritourism professional** is **not liable** for injury to or death of a participant resulting from the inherent risks of agritourism activities, provided that the required warning is posted, and that the written contract shall contain in clearly readable print the warning notice.

Provides exceptions from the limitation of liability in certain circumstances.

Effective August 15, 2008. (Adds R.S. 9:2795.5)

**5. Erdey (SB 707)**

**Act No. 190**

Provides for **immunity** for the members of the **regional juvenile justice commissions**, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of any actual or alleged act, error or omission that occurred within the scope of employment, duties or responsibilities, provided that nothing shall be construed to protect any person from suit or liability for any damage, loss, injury or liability caused by intentional or willful and wanton misconduct.

Effective August 15, 2008. (Adds R.S. 15:1093.1)

**6. Murray (SB 416)**

**Act No. 877**

Enacts the **Louisiana Unincorporated Association Act**.

Provides that immovable and movable property in this state may be acquired, held, encumbered, and transferred by an unincorporated association, and that an unincorporated association is a legal entity separate from its members for the purposes of acquiring, holding, encumbering, donating and otherwise transferring immovable and movable property, and as a legal entity may be a beneficiary of a trust and has the capacity to receive donations inter vivos and mortis causa.

Provides that if an unincorporated association has been inactive for three years, a person in possession or control of movable property of the association may transfer custody of the property under certain circumstances.

Provides that an unincorporated association may file in the secretary of state's office a statement appointing an agent authorized to receive service of process.

Effective August 15, 2008. (Amends R.S. 12:501 - 505; Adds R.S. 12:506-520)

**B. MEDICAL MALPRACTICE**

**1. Katz (HB 193)**

**Act No. 717**

Provides for **medical malpractice coverage** for physicians who voluntarily provide telemedicine services for the state.

Effective August 15, 2008. (Amends R.S. 40:1299.39(A)(1)(a)(ii))

**2. Ellington (HB 954)**

**Act No. 738**

Provides that **written consent** for any medical or surgical procedure shall mean the voluntary permission of a patient, through signature, marking, or affirmative action through an **electronic indication**.

Provides for **electronic signature authentication** and identification through an interactive system of security procedures, and allows authentication and identification to be used for an individual who participates in agreements, authorizations, contracts, records, or transactions that involve individually identifiable health information, including medical records and record keeping, transfer of medical records, medical billing, health care proxies, health care directives, consent to medical treatment, medical research, and organ and tissue donation or procurement.

Effective upon signature of governor (July 3, 2008). (Amends R.S. 40:1299.40(A)(1), (B), and (E)(6); Adds R.S. 40:1299.40.1)

### **3. N. Gautreaux (SB 353)**

**Act No. 417**

Provides that a **licensed physician** who **gratuitously volunteers** to supervise a licensed health care professional performing **ultrasound procedures** at a nonprofit pregnancy resource center in this state, shall not be liable for any civil damages as a result of any act or omission in the supervising or performing of the ultrasound procedure, or the interpretation of the results of the procedure, unless the damage or injury was caused by willful or wanton misconduct or gross negligence.

Effective June 21, 2008. (Adds R.S. 37:1732.1)

### **4. Michot (SB 652)**

**Act No. 558**

Provides relative to the definitions and general application of **medical malpractice**, and defines "**claimant**" as a patient or representative or any person, including a decedent's estate, seeking or who has sought recovery of damages or future medical care and related benefits. Provides that all persons claiming to have sustained damages as a result of injuries to or death of any one patient are considered a single claimant.

Provides that a complaint may be filed in any court having competent jurisdiction and proper venue, and requires the claimant to **send by certified mail** a copy of the complaint to the Patient's Compensation Fund Oversight Board (the "Board"), and shall further give notice to the board of the trial date.

Provides that the sole cost for which a qualified health care provider may be assessed shall be limited to the cost incurred prior to the rendering of a final judgment, after a trial, including but not limited to, costs assessed pursuant to C.C.P. Art. 970 in any instance where the board was not the offeror or offeree of the proposed settlement amount, and also provides that the health care provider shall not be assessed costs in any action in which the fund intervenes or he is a nominal defendant after there has been a settlement between the health care provider and the claimant.

Provides that the Board shall have the right to intervene at its discretion in a civil action or proceeding in which a health care provider files a dilatory exception of prematurity and the board reasonably believes that a health care provider is not qualified, or that a claim is invalid, and in any civil action or proceeding involving malpractice as defined in R.S.

40:1299.41 in which: (a) a self-insured provider is the subject of a liquidation, insolvency, receivership or bankruptcy proceeding; or (b) a provider's insurer is the subject of a liquidation, insolvency, receivership or bankruptcy proceeding, the insurer has been discharged from the civil action or proceeding and the malpractice claim is not covered by the Louisiana Insurance Guaranty Association.

Provides that in any instance in which a complaint for bodily injuries to or death of a patient on account of malpractice has been filed in court and the parties enter into a stipulation prior to trial as to the amount of past medical expenses and related benefits and the amount exceeds one hundred thousand dollars, the parties shall also stipulate to the admissibility of the supporting documents.

Effective August 15, 2008, except that certain provisions relative to limits of recovery shall be applicable to all complaints filed in court on or after January 1, 2009.

(Amends R.S. 40:1299.41(E)(1), 1299.42(A)(3) and (B)(2), 1299.44(A)(4), 1299.47(A)(1)(e); Adds R.S. 40:1299.41(A)(22), 1299.44(D)(2)(b)(xiv)and(xv) and (E))

## **C. PRESCRIPTION AND PEREMPTION**

### **1. Abramson (HB 1356)**

**Act No. 848**

Provides that the **effect of recordation** of a judgment in favor of the state ceases **10 years** after the date the judgment was rendered, but that the judgment may be reinscribed by political subdivisions or municipalities as provided by law.

Provides that the effect of recordation of all liens and privileges in favor of the state ceases 10 years after the date of recordation of the privilege or lien, or the lapse of a shorter prescriptive period applicable to the claim secured by the lien or privilege, but that the lien and privilege may be reinscribed by political subdivisions and municipalities only.

Effective August 15, 2008. (Amends R.S. 9:5685)

### **2. Abramson (HB 1368)**

**Act No. 387**

Relative to **prescriptive periods** on notices under the **New Home Warranty Act**, requires the builder to deliver notice of the requirements at the time of execution of the construction contract.

Provides that the La. State Licensing Board for Contractors shall adopt and promulgate rules and regulations to implement the provisions of new law.

Effective August 15, 2008. (Amends R.S. 9:3145)



### 3. Abramson (HB 815)

Act No. 367

Changes the **prescriptive period** to set aside a sale, transfer, lease, mortgage, encumbrance, or other document affecting **immovable property** due to lack of authority from 10 years to 5 years.

Changes the prescriptive period to set aside a sale, transfer, or other conveyance to or from any legal entity or unincorporated association affecting any immovable property due to **lack of recordation** from 10 years to 5 years.

Effective August 15, 2008. (Amends R.S. 9:5681(A) and (D))

### 4. Abramson (HB 863)

Act No. 371

Changes the prescriptive period to **five years** to set aside a document or instrument executed under a **power of attorney** on the ground that the power of attorney was without authority to do so or that the power of attorney was not valid.

Provides for retroactive application to all such documents whether recorded prior to or after August 15, 2008, but further provides that as to any documents as to which prescription has not already run and become final, this prescriptive period shall not become final and complete until 10 years from the date the document was recorded or August 15, 2013, whichever occurs first.

Effective August 15, 2008. (Amends R.S. 9:5682)

## D. PROCEDURAL LAW

### 1. Abramson (HB 1040)

Act No. 650

Relative to the **abatement of public nuisances**, changes the definition of "prohibited activity" to include certain criminal and drug activities, prostitution, and felony theft or illegal possession of stolen things, and excludes premises regulated by Title 26 (Liquors-Alcoholic Beverages).

Changes the number of residents required to file a petition for the abatement of a nuisance from 10 to seven and provides that they may petition without the payment of costs, and provides that a petition establishes a rebuttable presumption of a nuisance when it evidences two arrests of a prohibited activity within 35 feet of the premises within the preceding year.

Requires the court to close the premises for at least six months and one day if the premises have been used in a nonconforming manner.

Effective August 15, 2008. (Amends R.S. 13:4711(A), 4712, 4713(A) and (C)(2), and 4715)

**2. Hebert (SB 444)**

**Act No. 455**

**Exempts L.I.G.A.** from the bond posting requirement in judicial proceedings.

Effective August 15, 2008. (Amends R.S. 13:4581)

**3. Mills (HB 190)**

**Act No. 574**

Relative to violations of the **Sanitary Code**, provides that attorneys for DHH may file an **ex parte petition** to make administrative orders of the secretary or state health officer, which have become final as a result of all appeals being exhausted, executory if the administrative penalty assessed is unpaid or if the requested compliance actions have not been undertaken.

Requires the district court to grant the relief requested and issue a **judgment without a trial de novo** of the underlying facts supporting the order. However, for good cause shown and after posting a bond, the defendant may, within 10 days of judgment, seek an extension, modification, or suspension.

Effective August 15, 2008. (Adds R.S. 40:6(G))

**4. Quinn (SB 543)**

**Act No. 865**

Revises the provisions for **legislative continuance**, provides requirements for the timely filing of the motion, and authorizes the court to consider a motion for legislative continuance or extension at any time prior to the hearing or proceeding for sufficient cause shown.

Allows supervisory writs directly to the supreme court upon the denial or failure to grant the motion for continuance.

Effective August 15, 2008. (Amends R.S. 13:4163)

**5. Richmond (HB 100)**

**Act No. 623**

Authorizes public sales required to be advertised to be held at the **courthouse annex** if it is located in the same parish as the courthouse but separated by a navigable river.

Effective August 15, 2008. (Amends R.S. 13:4341)

**6. Lopinto (HB 133)**

**Act No. 716**

Authorizes the court, when approving a proposal to **pay money** or when rendering a **monetary judgment** to a **minor**, to order that the money be paid in accordance with a structured settlement and lists factors for the court's consideration.

Provides that the registry of the court, the trust code, and a structured settlement are all devices the court may use to ensure that the funds or property are used, administered, and conserved to benefit the minor.

Effective August 15, 2008. (Amends C.C.P. Art. 4521; Adds C.C.P. Arts. 4272(C) and 4522)

**7. Richmond (HB 79)**

**Act No. 882**

In civil and criminal proceedings, requires the judge to appoint a **competent interpreter** to translate the proceedings to a non-English-speaking person who is a principal party in interest or a witness and to interpret or translate his testimony.

Requires the court to order reimbursement to the interpreter for his services at a fixed reasonable amount and in civil proceedings, it shall be taxed as **costs of court**.

Effective August 15, 2008. (Adds C.C.P. Art. 192.2 and C.Cr.P. Art. 25.1)

**8. Lambert (HB 1286)**

**Act No. 658**

Provides that if a **suspensive appeal** is not perfected due to failure to file the bond, the trial court maintains jurisdiction to convert the suspensive appeal to a devolutive appeal.

Effective August 15, 2008. (Adds C.C.P. Art. 2088(B); Designates intro. para. as C.C.P. Art. 2088(A))

**9. Abramson (HB 585)**

**Act No. 806**

Provides that, except for good cause shown, all proceedings for **injunction** pursuant to C.C.P. Art. 3601 et seq., including ancillary proceedings, involving an interdicted person as applicant or adverse party, shall be conducted by the court and division or section **rendering the interdiction** judgment.

Intends to clarify the law by specifically stating that "post-judgment proceedings related to the interdiction" include proceedings for temporary restraining orders, and preliminary and permanent injunctions.

Provides for applicability to all claims existing or actions pending on its effective date and to all claims arising or actions filed on and after its effective date, however all orders and judgments previously issued and subsequently transferred shall remain in full force and effect, unless provided otherwise by the Code of Civil Procedure.

Effective July 7, 2008. (Amends C.C.P. Art. 4553)

**10. Ponti (HB 1386)**

**Act No. 663**

Provides that a judge of any court, trial or appellate, **shall** be recused when he:

- (1) Is a witness;
- (2) Has been employed or consulted as an attorney or has previously been associated with an attorney during the latter's employment in the cause and he participated in representation in the cause;
- (3) Is the spouse of a party or of an attorney employed in the cause or the judge's parent, child, or immediate family member is a party or attorney employed in the cause; or
- (4) Is biased, prejudiced, or interested in the cause or its outcome or biased or prejudiced toward or against the parties or the parties' attorneys or any witness to an extent that he would be unable to conduct fair and impartial proceedings.

Also provides for the circumstances in which a judge of any court **may be** recused, including when he is related to certain persons, or if his spouse, parent, child, or immediate family member has a substantial economic interest in the subject matter in controversy sufficient to prevent the judge from conducting fair and impartial proceedings in the cause.

Effective August 15, 2008. (Amends C.C.P. Art. 151(A) and (B))

**11. Connick (HB 1004)**

**Act No. 374**

Extends the requirement in civil proceedings that a hearing shall be held prior to the issuance of an order compelling **discovery of a legislator** in his capacity as a state lawmaker when the legislature is not a party in the case to legislative employees.

Effective June 21, 2008. (Amends R.S. 13:3667.3(B) and (C), R.S. 49:956.1, C.C.P. Art. 1469(5), and C.Cr.P. Art. 740; Adds R.S. 13:3667.3(D) and (E))

**12. Greene (HB 424)**

**Act No. 357**

Provides that an action to collect on a **promissory note** may be brought in the parish where the promissory note was executed or in the parish of the domicile of the debtor.

Effective June 21, 2008. (Amends C.C.P. Art. 74.4)

**13. Gray (SB 182)**

**Act No. 407**

A patient may be ordered to obtain **involuntary outpatient treatment** if the court finds that certain conditions apply and if he has executed an advance directive as defined in R.S. 28:221, it shall be taken into account by the court in determining the written treatment plan.

Requires a hearing, which may be before any judge in the judicial district, within five days and shall cause reasonable notice thereof informing the patient that he has a right to be present at the hearing, a right to counsel, and the right to cross examine witnesses testifying.

The court shall not order involuntary outpatient treatment unless a physician testifies and certain procedures must be followed to obtain an extension.

Effective August 15, 2008. (Amends R.S. 28:53.2(B), (C), (D), (E), (F), and (G); Adds R.S. 28:53.2(H), and 67-76)

#### **14. Foil (HB 548)**

#### **Act No. 824**

Upon recommendation of the Louisiana State Law Institute, adds "peremption" and "discharge in bankruptcy" to the list of **peremptory exceptions** and permits the court to supply those objections and the objection of res judicata.

Eliminates arbitration and award, transaction or compromise, assumption of the risk, discharge in bankruptcy, and division from the **affirmative defenses** and replaces the term "contributory negligence" with "negligence, or fault of the plaintiff..."; and allows the court to consider an affirmative defense as either an incidental demand or a peremptory exception, in the interest of justice.

Adds "electronically stored information" to the provision for **subpoena duces tecum** and provides for compliance and objections to the subpoena duces tecum in line with federal procedure, mainly by including requests for electronically stored information, and by allowing the subpoenaed party to reply to a subpoena duces tecum with written objections.

Authorizes the service of subpoenas by private persons without the need of a motion and order.

Sanctions for failure to comply with an order compelling discovery are generally not available against a person who fails to provide electronically stored information which was lost as a result of the routine, good-faith operation of an electronic information system.

Adds issues that may be considered in a **pretrial conference** including those relating to discovery of electronically stored information, and the form in which it should be produced, to claims of privilege or protection of trial preparation material, and to the presentation of testimony or other evidence by electronic devices.

When two or more separate actions are pending in the same court, if a trial date has been set in any of the subsequently filed actions that have not yet been consolidated, then the written consent of each section or division of the court shall be required.

Repeals the waiver of notice of the signing of final judgments.

Authorizes summary proceedings in an action for dissolution or specific performance of a compromise entered pursuant to Article 1916(B) or by consent judgment.

Effective January 1, 2009. (Amends C.C.P. Arts. 927, 1005, 1354, 1355, 1471, 1551(A), 1561(A), 1916, and 2592; Repeals C.C.P. Art. 1913(E))

**15. Michot (SB 574)**

**Act No. 789**

In actions by or against the **state** in connection with contracts, provides that any party aggrieved by a final judgment or interlocutory order or ruling of the 19th Judicial District Court may ask or seek review thereof, to the Court of the Appeal for the First Circuit, or the Supreme Court, as otherwise permitted in civil cases by law and the constitution.

This does not apply to any claim or controversy arising out of any contract or agreement executed prior to August 1, 2008.

Effective July 7, 2008. (Adds R.S. 39:1691(E))

**E. EVIDENCE**

**1. Morris (HB 29)**

**Act No. 335**

Regarding videotaped statements of a **protected person** (a juvenile or a person with a developmental disability), requires that either the person conducting or supervising the interview be present at the proceeding and available to testify for the videotaped statement to be admissible.

Effective August 15, 2008. (Amends Ch.C. Art. 327(A)(2))

**2. Schroder (HB 631)**

**Act No. 85**

Amends the procedure by which a defendant has access to a copy of a **videotaped statement of a protected person**. Provides that the defendant, through his attorney only, may be provided a copy of the videotape. Further provides that if the defendant's attorney is provided a copy by court order or by permission of the district attorney, only the defendant and the attorney are permitted to view the videotape. Provides that if the defendant represents himself, he shall have access to the videotape under an order of the court. Requires the defense attorney to return the tape at the conclusion of the case. Requires the tape to be filed as part of the record under seal for use in subsequent proceedings and shall only be released upon motion of the state or counsel of record with a court order.

Provides that a person who makes an unauthorized disclosure of the videotape or its contents may be subject to liability for civil damages, including punitive damages.

Effective August 15, 2008. (Amends R.S. 15:440.5(C))

**3. Arnold (HB 219)**

**Act No. 200**

**Repeals the privilege** granted to public accountant review committee proceedings, records, reports, letters, and papers of a review committee.

Effective August 15, 2008. (Repeals R.S. 13:3737)

#### 4. Arnold (HB 508)

Act No. 203

Provides that any proceedings, records, reports, letters of comment, letters of response, or working papers related to a **peer review of a CPA shall be privileged** but the privilege shall not be construed to: (1) establish a privilege with respect to any information or records within the knowledge or possession of a person or firm not obtained from or produced in connection with a peer review; (2) prevent the disclosure, use, or introduction of information or records in any civil proceeding arising out of a dispute between persons conducting a peer review and a licensee subject to a peer review and arising from the performance of a peer review; (3) prevent a designee of the board from disclosing, using, introducing, or testifying with respect to information or records which are relevant in a proceeding before the board; (4) prevent designees of the Society of La. Certified Public Accountants from giving the board access to peer review reports or having discussions with a designee of the board concerning peer review reports; (5) prevent peer review reports of licensees who participate in the Center for Public Company Audit Firms Peer Review program from being disclosed.

Provides that a licensee is **immune from liability** if furnishing information for a peer review only. Records and proceedings are prohibited from disclosure to certain third parties.

Effective August 15, 2008. (Amends R.S. 37:77(H), 83(A), (B), and (C), and 86(C); Adds R.S. 37:73(18))

#### 5. Chaisson (SB 721)

Act No. 679

Requires that if **BAC test results** are from a source other than the office of state police crime laboratory and a timely challenge is raised in a court of competent jurisdiction to the authenticity, reliability or accuracy of the test results, or to the lack of a proper foundation for the admissibility of the test results into evidence, the court shall conduct a hearing to determine the validity of the challenge and, if it finds, by a preponderance of the evidence, that the challenge is well-founded, may rule the blood alcohol concentration (BAC) test results inadmissible.

Prohibits the application to actions for the suspension or disqualification of a driver's license pursuant to R.S. 32:661 et seq., (tests for suspected drunken drivers) R.S. 32:414, (suspension, revocation, renewal, or cancellation of licenses; judicial review) or R.S. 32:414.2 (commercial motor vehicle drivers; disqualification; alcohol content in breath and blood; implied consent).

Effective July 1, 2008. (Adds R.S. 13:3714(C))

#### 6. Donahue (SB 308)

Act No. 787

Provides for a hearing upon motion of any party filed at least 60 days prior to trial, to be held and ruled on at least 30 days before trial to present evidence on why an **expert** qualifies as an expert and why their methodologies are reliable.

For good cause shown, the court may allow live testimony at the contradictory hearing.

Requires a judge, if the matter is taken under advisement, to provide findings of fact, conclusions of law, and written reasons no later than **five days** after the hearing for determining whether a person qualifies as a expert by providing the following:

- (1) The elements required to be satisfied for a person to testify under Articles 702-705 of the Code of Evidence.
- (2) The evidence presented at the hearing to satisfy the requirements of Articles 702 -705 of the Code of Evidence at trial.
- (3) A decision by the judge as to whether or not a person shall be allowed to testify under Articles 702-705 of the Code of Evidence at trial.
- (4) The reasons of the judge detailing in law and fact why a person shall be allowed or disallowed to testify under Articles 702-705 of the Code of Evidence.

Provides an **exemption** to testimony in an action for divorce or annulment or marriage, a separation in a covenant marriage, a property partition, or to a succession.

Provides that all or a portion of the **costs**, including expert witness fees and costs, incurred may, in the discretion of the court, be assessed to the **non-prevailing party** at the conclusion of the hearing on the motion.

Does not apply to actions filed to recover covered losses in accordance with a homeowners insurance policy or business owners insurance policy which resulted from Hurricanes Katrina or Rita.

Effective January 1, 2009; except if an action has been set for trial between 1/1/09 and 4/1/09, effective as to those actions on 4/1/09.

(Amends C.C.P. Art. 1425(C); Adds C.C.P. Art. 1425(F))



## F. CONTRACTS / CONSUMER PROTECTION

### 1. Wooton (HB 1162)

Act No. 323

Provides that the **attorney general** may receive information and investigate complaints with respect to the commercial and trade practices of, or acts of, **motor carriers** transporting household goods for consumers.

Provides that the attorney general may institute legal proceedings which seek relief or fines and act according to his powers and functions.

Effective June 17, 2008. (Adds R.S. 45:164.1)

### 2. Dupre (SB 123)

Act No. 399

Provides that a **noncompete agreement** is null and void if it is determined that members of the agreement were engaged in ultra vires acts. Provides that members of a noncompete agreement may participate in the transfer, sale, or purchase of stock or interest in publicly traded entities.

Adds an additional exception to the prohibition against contracts which restrain the exercising of a lawful profession, trade, or business for a period of two years for shareholders of a corporation, partners of a partnership, or members of a limited liability company who agree with the corporation, the partnership, or the limited liability company, respectively, to refrain from carrying on a similar business within certain parish or municipal areas.

Effective August 15, 2008. (Amends R.S. 23:921(H); Adds R.S. 23:921(J), (K) and (L))

### 3. Edwards (HB 968)

Act No. 711

Allows for agreements **prohibiting an employee** employed by a franchisor from **competing** against his employer or other franchisees of his employer during the period of his employment by the franchisor and for a period not to exceed two years following severance of the employment relationship between the franchisor and the employee.

Effective August 15, 2008. (Adds R.S. 23:921(F)(1)(c))

### 4. Walsworth (SB 424)

Act No. 188

Provides that a **cemetery authority** offering to provide burial rights or a cemetery authority or other entity offering cemetery related merchandise and services shall provide to the customer, upon purchase, a **written contract** which complies with the requirements and the rules and regulations of the Louisiana Cemetery Board.

Effective June 13, 2008. (Adds R.S. 8:206)

**5. Marionneaux (SB 433)**

**Act No. 858**

Repeals all powers of the commissioner of the office of financial institutions under the **Credit Repair Services Organizations Act**, and provides for regulation by the **attorney general** of Louisiana.

Eliminates the option to establish a trust account in lieu of the requirement to buy a \$100,000 surety bond, and further provides that failure to obtain or file the surety bond is a violation for purposes of civil or criminal remedies or penalties. Requires the bond to be filed with the attorney general.

Effective July 9, 2008. (Amends R.S. 9:3573.1, 3573.2(A), 3573.3(1), (8), (9) and (10), 3573.4, 3573.6(A)(2), 3573.10(C), 3573.11(B) and (C), 3573.13(B) and (C), and 3573.16; Repeals R.S. 9:3573.3(7), 3573.9 and 3573.17)

**6. Nevers (SB 801)**

**Act No. 681**

Mandates that a seller provide in the **property disclosure document** a statement of acknowledgment as to whether or not an **illegal laboratory** for the production or manufacturing of methamphetamine was in operation on the purchasing property.

Provides for reporting to DEQ and the local sheriff's office, and requires DEQ to maintain a list of reported property.

Effective August 15, 2008. (Amends R.S. 9:3198(A)(2); Adds R.S. 9:3198.1)

**7. Lopinto (HB 1354)**

**Act No. 756**

Relative to **price gouging**, adds "prices charged" in addition to the "value received" for goods and services sold, and provides an **exception** for when the price is attributable to fluctuations in applicable commodity markets or national market trends, or to reasonable expense and charges for attendant business risk incurred in procuring or selling the goods or services during the state of emergency.

Effective August 15, 2008. (Amends R.S. 29:732(A))

## II. SUCCESSIONS AND TRUSTS

### 1. Tim Burns (HB 605)

Act No. 637

Upon recommendation of the Louisiana State Law Institute, provides that a **charitable trust** is created when a person makes a donation in trust for the relief of poverty, the advancement of education or religion, the promotion of health, governmental or municipal purposes, or other purposes the achievement of which is beneficial to society, or to benefit one or more institutional beneficiaries.

Provides procedures and qualifications to select trustees.

Eliminates the requirements that certain amendments to the trust instrument be filed with the attorney general.

Provides that a charitable trust shall have perpetual duration unless the trust instrument provides otherwise.

Effective January 1, 2009. (Amends R.S. 9:2271-2275, 2283, and 2291; Adds R.S. 9:2290; Repeals R.S. 9:2276-2280 and 2292-2295)

### 2. Foil (HB 1179)

Act No. 325

Provides for the appointment of an **agent** for service of process when a **trust** is created for the payment of settlement of claims or judgments or to pool liabilities on account of personal injury and occupational disease arising out of or incurred during the course and scope of the employment relationship.

Requires the agent to file with the secretary of state his full name, address, and acceptance of the appointment and requires any changes to be filed within 30 days. Requires the secretary of state and recorder of mortgages to maintain a permanent record of agents.

Provides that a registered agent may resign by giving written notice to the trust, secretary of state, and the recorder of mortgages of the parish where the trust is domiciled and a successor agent may be appointed.

Effective August 15, 2008. (Adds R.S. 9:2242)

### III. FAMILY LAW

#### A. MARRIAGE, DIVORCE, AND DOMESTIC MATTERS

##### 1. Greene (HB 393)

Act No. 354

To confirm a 103(1) divorce default judgment, additionally requires the plaintiff to submit to the court a **certification** which includes information regarding the type and date of service, the date a preliminary default was entered, a certification by the clerk that the record was examined, and a statement that no opposition has been filed.

Effective June 21, 2008. (Amends C.C.P. Art. 1702(E))

##### 2. Lorusso (HB 158)

Act No. 801

Upon the recommendation of the Louisiana State Law Institute, revises the law on domicile.

Provides that the domicile of each person is the place of his **habitual residence** and that persons may not have more than one domicile. The domicile of an unemancipated **minor** is that of the parent or parents with whom the minor usually resides, the domicile of the person to whom legal authority has been granted, the domicile of the tutor of the minor, or the domicile of the tutor with whom the minor usually resides, unless the court directs otherwise. The domicile of a **full interdict** is that of his curator. The domicile of a limited interdict is governed by the judgment of limited interdiction and the domicile of a person under continued or permanent tutorship is that of his tutor. Spouses may have common or **separate domiciles**.

Proof of a person's intent to **change** his domicile depends upon the circumstances and a signed, recorded declaration may be considered evidence. A person who holds a temporary position retains his domicile unless he demonstrates a contrary intent.

Effective January 1, 2009. (Amends C.C. Arts. 38-46; Adds C.C.P. Art. 11)

##### 3. Quinn (SB 220)

Act No. 408

Provides that in a proceeding for divorce or thereafter, a **summary proceeding** shall be undertaken by the court upon request of either party to allocate the use of **community property**, including monetary assets, bank accounts, savings plans, and other divisible movable property pending formal partition proceeding, in accordance with law.

Effective August 15, 2008. (Amends R.S. 9:374(E))

Upon the recommendation of the Louisiana State Law Institute, provides for three kinds of **emancipation**: (1) judicial emancipation; (2) emancipation by marriage; and (3) limited emancipation by authentic act.

Provides for the limited emancipation of a **minor**, who is sixteen years of age or older, by an authentic act executed by the minor, and his parents or tutor, and it shall specify the kinds of juridical acts the emancipated minor shall have the capacity to make.

The father and mother are **not responsible** for the damage occasioned by their minor child who has been emancipated by marriage, by judgment of full emancipation, or by judgment of limited emancipation that expressly relieves the parents of liability.

A minor can petition for emancipation **without** the participation of his tutor or administrator, the parents or the tutor of a minor can petition for the emancipation of the minor, and a minor and his parents or tutor can file a joint petition for judicial emancipation of the minor.

Judicial emancipation is **effective** on the date the judgment is signed, emancipation by marriage is effective upon marriage, and a limited emancipation by authentic act when executed.

Provides that a judicial emancipation and an emancipation by authentic act may be **terminated** or modified for good cause and an emancipation by marriage may not be modified or terminated.

**Venue** for a judicial emancipation shall be the parish where a party is domiciled.

Emancipation hearings shall be a **summary proceeding**, the minor shall be present, and judicial emancipation may be granted without a hearing.

A judgment granting, modifying, or terminating emancipation is not suspended during the pendency of an appeal and a court may modify or terminate its judgment of emancipation or an act of limited emancipation by authentic act when the court finds good cause.

Provides for the **recordation** of every judgment granting, modifying, or terminating emancipation.

**Changes jurisprudence** by providing that an emancipation by authentic act does not relieve the parents from liability.

Effective January 1, 2009. (Amends C.C. Arts. 365-371, C.C. Art. 2318, and C.C.P. Arts. 3991-3998)

## B. CHILD SUPPORT, PATERNITY, AND CUSTODY

### 1. Chandler (HB 374)

Act No. 631

To be qualified as a **mediator**, a former judge may have actually served as a judge in a family court for three years and completed a minimum of 12 hours of training or completed 20 hours of training in this area.

**Deletes** the requirement that mediation training shall include theoretical and clinical training in the development and practice of negotiation and mediation skills and that the LSBA, Dispute Resolution Section, make available a register of mediators and a summary of their qualifications.

Effective August 15, 2008. (Amends R.S. 9:334(B)(2) and (E) and Ch.C. Art. 439)

### 2. Greene (HB 1202)

Act No. 751

Requires a parent entitled to primary custody of a child to obtain either a court order or the consent of the other parent prior to **relocation**.

Effective July 3, 2008. (Amends R.S. 9:355.3(A), 355.6 (intro. para.), and 355.8; Repeals R.S. 9:355.3(C) and 355.7)

### 3. Willmont (HB 335)

Act No. 578

Provides that extraordinary medical expenses are unreimbursed medical expenses which exceed \$250 per child per **calendar** year.

Changes the date of the next **review** of the **child support guidelines** to 2012 and provides that the review shall take place every four years thereafter.

Adds the president of the **Louisiana Hearing Officers' Association** as a member of the guideline review committee.

DSS shall be authorized to obtain, through an interagency agreement with DHH, health insurance enrollment data currently being provided in accordance with federal law.

Provides that if any state employee or any person working with the state knowingly, or by reason of gross negligence, discloses data match information of an individual, a civil action for damages may be brought.

Effective August 15, 2008. (Amends R.S. 9:315.5 and 315.16(A); Adds R.S. 9:315.16(B)(11) and R.S. 46:236.1.11)

#### 4. Hines (HB 494)

Act No. 585

The child support guideline schedule incorporates the current income tax withholding tables for the federal government, the most recent economic estimates of child-rearing expenditures, and an **adjustment** for the differences between the income distribution in Louisiana and the United States from \$2,250 to \$30,000.

Incorporates a dissolution factor which is a **built-in reduction** recognizing the obligor's additional expenditures for maintaining his household when the children are in his physical custody.

Extends the schedule from \$20,000 to \$30,000 per month.

Effective August 15, 2008. (Amends R.S. 9:315.19)

#### 5. Harrison (HB 759)

Act No. 886

Requires DSS to **prepare and distribute** information regarding modifications and material change in circumstances in child support cases and how to proceed *in forma pauperis*. Requires the clerks of court to provide information, rules, and forms regarding modifications of support.

Requires the court or DSS to provide this information to the parties when the initial support order is entered.

Effective August 15, 2008. (Amends R.S. 9:311(A))

#### 6. Lopinto (HB 339)

Act No. 579

Provides that **special expenses** intended to enhance the health, athletic, or social development of the child may be added to the basic child support obligation.

Provides that if the combined adjusted gross income of the parties exceeds the schedule, the court may place a portion of the obligation in a **spendthrift trust** for the child.

Effective August 15, 2008. (Amends R.S. 9:315.1(C)(1)(b), 315.6 and 315.13(B))

#### 7. Rosalind Jones (HB 84)

Act No. 336

Regarding the **crime** of failure to pay a child support obligation, provides that the **penalty** when the amount of the arrearage is more than \$15,000 and the obligation has been outstanding for at least one year shall be not more than \$2,500, or imprisonment with or without hard labor for not more than two years, or both.

Effective August 15, 2008. (Adds R.S. 14:75(C)(5))

## 8. Jackson (SB 161)

Act No. 444

Provides that if the state, a political subdivision of the state, or the petitioner pays the initial costs of blood or tissue tests to determine paternity, they may **recover costs** from an individual found to be the father of the child, through the income assignment order.

When a failure to pay court-ordered child support results in a judgment by operation of law, **prescription** is interrupted by each payment of child support pursuant to a judgment, including payments made through income assignment orders, seizures, or tax intercepts.

Provides that the notice to withhold income becomes binding 14 days after it is mailed.

Authorizes the court to impose a **fine** against the payor of up to \$25.00 per day for the failure to comply with the income assignment order.

Effective August 15, 2008. (Amends R.S. 9:397.1(B), R.S. 13:4291(A), and R.S. 46:236.3(B)(1), (I), and (K))

## 9. Jackson (SB 260)

Act No. 533

Provides that a judgment **establishing paternity** may be set aside or vacated if genetic testing indicates that the adjudicated father of a child is not the biological father of the child.

The proceeding shall be brought within certain time periods. Provides that this shall not apply if the child is presumed to be a child of a marriage.

If an order of support is dismissed on the basis of non-paternity of the adjudicated father, the court shall **nullify** the judgment of paternity, but it does not affect any child support payment or arrearages paid, due or owing.

The authentic act of acknowledgment may, without cause, be **revoked** by the person executing it within 60 days upon submission of a sworn statement refuting the named father on a form developed and made available by the office of vital records, or in a judicial hearing for the limited purpose of revoking the acknowledgment or declaration, or in a judicial hearing relating to the child wherein the affiant to the authentic act of acknowledgment is a party to the proceeding.

The revocation shall not preclude the initiation of a paternity action against any alleged putative father, or by a man against a mother to establish his paternity. However, if the voluntary acknowledgment is revoked by order of the court, no further action may be initiated against the excluded person.

Effective August 15, 2008. (Amends R.S. 9:406; Adds R.S. 9:399.1)



An action for the **failure to exercise** or **to allow** child visitation, custody, or time rights pursuant to a court order shall be a rule to show cause why the parent should not be held in contempt and why the court should not further render judgment.

If the action is for the **failure to exercise** child visitation, custody, or time rights, and the petitioner is the prevailing party, the defendant shall be held in contempt of court and the court shall award to the petitioner:

- (1) All costs for counseling for the child.
- (2) A reasonable sum for any actual expenses incurred by the petitioner.
- (3) A reasonable sum for a caretaker of the child, based upon the hourly rate for caretakers in the community; and
- (4) All attorney fees and costs of the proceeding.

If the action is for the **failure to allow** child custody, visitation, or time rights, and the petitioner is the prevailing party, the defendant shall be held in contempt of court and the court shall award to the petitioner all of the above and additional visitation, custody, or time rights with the child equal to the time lost.

The court may award a reasonable **penalty** against the defendant upon a finding that the failure to allow or exercise visitation, time, or custody rights was intended to harass the petitioner.

The court may award attorney fees and costs of the defendant if he is the prevailing party.

It shall be an **affirmative defense** that the failure to allow or exercise child visitation rights was by mutual consent, beyond the control of the defendant, or other good cause shown.

A pattern of **willful and intentional** violation, without good cause, may be grounds to move for modification of a custody or visitation decree.

Effective August 15, 2008. (Amends R.S. 9:346; Adds C. C. Art. 136.1; Repeals R.S. 9:347)

## C. ADOPTION, CHILD IN NEED OF CARE, JUVENILES

### 1. Rosalind Jones (HB 322)

Act No. 351

Upon the recommendation of the Louisiana State Law Institute, provides that anyone over the age of 17 years may be adopted when the adoptive parent is the spouse or the surviving spouse of a parent of the person to be adopted. In all other circumstances, court authorization of the adoption of an adult is required.

The parties shall consent to the adoption in an **authentic act of adoption**, but prohibits consent by procuration and mandate.

Requires the **concurrence** in the adoption by the spouse of the adoptive parent and the spouse of the person to be adopted, but the concurrence does not establish the legal relationship of parent and child. An act of adoption without this concurrence is absolutely null.

Provides for jurisdiction and venue for adult adoptions.

An adult adoption is **effective** when the act of adult adoption and any required judgment are filed for registry, or if the act is filed within five days after the date of the last signature required for validity, it shall be effective as of the date of the last signature.

The act of an adult adoption and any required judgment shall be transmitted to vital records for **indexing**.

Effective January 1, 2009. (Amends C.C. Art. 214, C.C.P. Art. 10(A)(1) and R.S. 9:461 and 462; Adds C.C. Arts. 212 and 213, C.C.P. Art. 74.5, and R.S. 9:463-465)

### 2. Templet (HB 444)

Act No. 583

Upon the recommendation of the Louisiana State Law Institute, requires additional declarations in the **act of surrender**, including whether the parent wants to be notified of opposition to the adoption, the future release of identifying information in the event of a medical necessity, and that the Statement of Family History may be given to the adoptive parents and to the adopted person when he reaches 18 years of age.

Provides that a copy of the Act of Surrender shall be made available to a surrendering parent.

Requires that the surrendering parent receive a notarized statement that the **final judgment** of adoption was legally rendered, but it shall not identify the adoptive parents.

Requires additional information regarding the biological parent and the medical history of the child.

A minor adopted person may make the request for disclosure of nonidentifying medical or genetic information.

Adds **firm or lawyer** to those having the **duty to maintain** medical records, and includes providing updated information and facilitating the exchange of information. Provides that the duty to maintain the records may be transferred.

Specifies that the access to confidential reports is to the court's confidential records and that the department's reports shall be retained in the court's records.

Authorizes siblings or descendants of the adoptee to file a motion for disclosure.

Adds that the need for medical treatment as a specific criteria for the disclosure of information extends to the adopted person's siblings.

Requires the court to grant a motion seeking nonidentifying medical or genetic information.

When a curator ad hoc is appointed by the court to inspect adoption records, he shall report back to the court within 30 days.

Authorizes foster parents to enter into **continuing contact agreements** and provides that continuing contact agreements are not against public policy if the voluntary agreement is done in conformity with the provisions of the Children's Code.

Adds additional persons to those who may use the **voluntary registry** and additional information the registry will disclose in response to a written request.

Changes registration from the office of human development to the office of community services, as required by Art. 1270(B).

Effective August 15, 2008. (Amends Ch.C. Arts.1122(B)(intro.para.) and (F)(intro.para.), 1123(B) and (C), 1124, 1125, 1126, 1127, 1127.1, 1137(D), 1172, 1173(A)(2), 1185, 1186(A) and (B), 1188, 1189, 1190(A) and (C), 1191, 1192, 1269.1, 1269.2(B), 1269.6, 1270(A) and (C), 1272(C) and (D), and 1276; Adds Ch.C. Arts. 1122(B)(12), (13), and (14), (F)(18), (19), and (20), (G)(18) and (19), and (H), 1123(D), 1190(D), 1269.1.1, and 1270(F))

### 3. Henry (HB 139)

### Act No. 482

Provides that domestic relations and adoption records may be **destroyed**, if they have been reproduced by a photographic method and the reproduction is retained permanently by the clerk of court, and if the medium of reproduction is approved by the American National Standard Institute or the International Standards Organization.

Provides that the electronic medium of recordation shall be deemed to be an **original**, when certified by the clerk of court, and is admissible as evidence in a court or administrative proceeding.

Effective August 15, 2008. (Amends Ch.C. Art. 415(B); Adds Ch.C. Art. 415(A)(3))

#### **4. St. Germain (HB447)**

**Act No. 584**

Provides that if the surrendering parent is not domiciled in this state, the agency shall be domiciled in this state or accept the surrender of a child in the custody of DSS.

Requires an agency accepting an act of surrender to be licensed by DSS.

Changes the **time periods** in which a surrender may be executed for **agency** adoptions from five days to three days.

Adds limited liability partnership to those who may advise a parent in accordance with the act of surrender.

Provides that the **failure to file** the authentic act of surrender shall not affect the final adoption.

Effective August 15, 2008. (Amends Ch.C. Arts. 1117, 1121(A), 1122(B)(1), (4), (5), (9), (10), and (11), F(4), (5), and (6), G(4), (5), (6), and (10) and 1130(A) and (B); Adds Ch.C. Arts. 1130(E) and 1131(H))

#### **5. Lambert (HB 115)**

**Act No. 715**

Authorizes law enforcement agencies to release to the public the name, age, physical description, and **photograph** of a child when he has escaped from a juvenile detention center.

Effective August 15, 2008. (Adds Ch.C. Art. 412(K))

#### **6. Hutter (HB 681)**

**Act No. 293**

When a child is taken into custody and a written statement of the facts supporting probable cause is submitted, the officer shall not be required to **personally appear** in court for any determination of probable cause.

Effective August 15, 2008. (Amends Ch.C. Art. 814(D))

## 7. Hutter (HB 682)

Act No. 641

Provides that a child may be **photographed or fingerprinted** in connection with either a felony-grade delinquent act or a misdemeanor-grade delinquent act and deletes the requirement that it be done upon motion of the district attorney or court order. Requires the **destruction** of the fingerprint card if the child does not have a felony conviction in adult court and has not been adjudicated for a felony-grade delinquent act upon reaching the age of 17.

Effective August 15, 2008. (Amends Ch.C. Art. 818)

## 8. Gray (SB 38)

Act No. 222

Provides for the **divestiture** of juvenile court jurisdiction and **transfer** to criminal court jurisdiction when a competency or sanity exam is ordered.

Changes the sanity commission to a **competency commission**, but its composition and criteria for membership are basically unchanged.

When capacity is regained, requires that the contradictory hearing be held within 10 days rather than 30 days, and to determine for good cause and in the child's best interest whether the child may be released from custody. Provides that if all parties agree, another mental exam is not necessary. It also permits the court to release the child to a less restrictive environment.

Increases the time for filing the commission's report from thirty to forty-five days and condenses the number of items which the report must contain. It also provides that the report is admissible at the hearing and that commission members may be called to testify.

Deletes the requirement that if the report concludes the child does not possess the capacity to proceed, that it also include a prognosis type of remediation and deletes the prohibition against the report containing any of the child's statements about offense and using any statement in the proceedings.

Effective June 16, 2008. (Amends Ch.C. Arts. 834, 834.1(A)(intro. para.) (B), and (C), 835(A) and (C)(intro. para.), 836, 837(B) (intro. para.), (C)(intro. para.), (D)(intro. para.), and (F)(3), 837.1(A)(1), 838(A) and (B), and 869; Adds Ch.C. Arts. 305(E), 869.1, 869.2, and 869.3)

## 9. Gray (SB 73)

Act No. 392

Upon recommendation of the Louisiana State Law Institute, requires the court to advise parents of their obligation to contribute to the **cost of care and treatment** of their child when he is in the custody of DSS and requires the case plan to recommend an amount.

Requires the court to consider certain factors in determining the amount and provides that contributions shall not be ordered if there is an existing child support order and contributions terminate when a child support obligation is ordered.

Directs DSS to make recommendations for parental contributions in accordance with the provisions of the Louisiana Administrative Code.

Effective August 15, 2008. (Amends Ch.C. Arts. 625(B)(2), 675(B)(2), and 685 and R.S. 46: 51.1(A); Adds Ch.C. Art. 682(B)(5))

#### **10. Gray (SB 77)**

**Act No. 394**

Adds CASA volunteers to the list of **mandatory reporters** of child abuse.

Effective June 21, 2008. (Adds Ch. C. 603(13)(i))

#### **11. N. Gautreaux (SB 258)**

**Act No. 532**

Grants a court exercising juvenile jurisdiction **concurrent jurisdiction** in proceedings brought by DSS to establish paternity or to establish, modify, or enforce support and also gives the court exercising juvenile jurisdiction concurrent jurisdiction in proceedings brought by the district attorney to modify support.

Provides that any **court** that collects and distributes child support payments must forward the portion due to DSS within 2 days of receipt.

Effective August 15, 2008. (Amends Ch.C. Art. 311(B)(1)(b) and R.S. 6:333(B)(intro. para.), R.S. 44:4.1 (B)(28), and R.S. 46:236.1.9(B); Adds R.S. 46:236.1.1(8); Repeals Ch.C. Art. 311(A)(1)(c))

#### **12. Quinn (SB 264)**

**Act No. 411**

Provides that under the **Protection From Family Violence Act**, when the court orders a temporary restraining order in an ex parte proceeding it may also award the following:

- (1) Possession of all separate and personal property, including but not limited to telephones or other communication equipment, computer, medications, clothing, toiletries, social security cards, birth certificates or other forms of identification, tools of the trade, checkbook, keys, automobile, photographs, jewelry, or any other items or **personal effects** and restrain the defendant from transferring, encumbering, concealing, or disposing of petitioner's personal or separate property.
- (2) Exclusive care, possession, or control of any **pets** belonging to or under the care of the petitioner or minor children residing in the residence or household of either party, and directing the defendant to refrain from harassing, interfering with, abusing or injuring any pet, without legal justification, known to be owned, possessed, leased,

kept, or held by either party or a minor child residing in the residence or household of either party.

Relief may include ordering a **medical evaluation** of the defendant or the abused person, or both, to be conducted by an independent court-appointed evaluator who qualifies as an expert in the field of domestic abuse. The evaluation shall be conducted by a person who has no family, financial, or prior medical relationship with the defendant or abused person, or their attorneys of record. After an independent medical evaluation has been completed and a report issued, the court may order counseling or other medical treatment as deemed appropriate.

Requires the defendant to pay all costs of enforcement and modification proceedings and appeals.

Effective June 21, 2008. (Amends R.S. 46:2136(A)(4) and 2136.1 and Ch.C. Art. 1570.1(A); Adds R.S. 46:2135(A)(6) and (7) and Ch.C. Arts. 1569(A)(6) and (7) and 1570(A)(5))

**13. Jackson (SB 781)**  
**Schroder (HB 1214)**

**Act No. 567**  
**Act No. 752**

Provides that an attorney representing a child in a child abuse and neglect case, together with other professionals involved, may participate in **multi-disciplinary interaction** concerning the child, including but not limited to interdisciplinary communication, investigation, discovery, meetings, conferences, proceedings, and administrative hearings.

Effective June 30, 2008. (Amends Ch. C. Art. 551)

**14. Edwards (HB 498)**

**Act No. 634**

Provides that in a judicial district comprised of more than one parish, a continued custody hearing for children in need of care and for children adjudicated delinquent may be conducted in **any parish** in the judicial district.

Effective August 15, 2008. (Adds Ch.C. Arts. 739(E) and 821(F))

**15. Gray (SB 76)**

**Act No. 436**

Authorizes counsel appointed for a child, who is in foster care and over the age of 15, or the department to file a motion to **restore the parental rights** or parental contact with a parent whose rights have been terminated.

Requires a **hearing** not less than 45 days nor more than 60 days after the date of the filing of the motion and the court is authorized to continue the hearing for good cause. The court is further authorized to set the hearing within 15 days after filing of the motion upon joint motion of the department and the child.

Requires the moving party to mail a copy of the motion and order to the child's parents, foster parents, and CASA volunteer, all of whom have a **right to be heard**, but the motion is required to be dismissed if the parent cannot be located. **Prohibits** the court from granting the relief requested in the motion without the consent of the parent.

Requires the department to make a diligent effort to locate the parent, notify him of the effects of restoration and financial obligations, and provide the parent with a copy of the motion showing the time and date of the hearing.

Requires the department to submit a **confidential report** to the court to include findings on the following:

- (1) The change in circumstances since the certification for adoption.
- (2) A summary of the reasons why parental rights were terminated and the date of the judgment.
- (3) The willingness of the parent to resume contact with the child and to have parental rights restored.
- (4) The willingness of the child to resume contact with the parent and to have parental rights restored.
- (5) The ability and willingness of the parent to be involved in the life of the child and to accept the physical custody of the child.
- (6) Other relevant information.

Authorizes the court, if it is in the **best interest of the child**, to allow contact between the parent and child under specified conditions, restore the parental rights of the parent, or place the child in the custody of the parent with or without continuing supervision of the department.

Authorizes the court to enter a judgment without a hearing if the department, counsel, CASA volunteer, and the parent stipulate that restoration of parental rights is in the best interest of the child.

Provides that restoration of parental rights and placement of the child in the custody of the parent without supervision by the department is considered a **permanent placement**, but any other disposition becomes a part of the case plan.

Requires the court at a permanency review hearing to inform the child of the provisions regarding restoration of parental rights.

Effective August 15, 2008. (Adds Ch. C. Arts. 1051-1053 and 1146(E))



## 16. Quinn (SB 699)

Act No. 561

Requires an acknowledgment by **authentic act** to be **filed** with the office of vital records, the central repository for paternity acknowledgments, if the child is born in Louisiana.

Requires a **judgment** of filiation rendered by a court which recognizes a father as having formally acknowledged a child born outside of marriage and in which the father is adjudged the parent of the child to be filed with the office of vital records, the central repository for adjudications of paternity.

Requires that if a child is born **outside of marriage**, the full name of the father is to be included on the record of birth only if the father and mother have signed a voluntary acknowledgment of paternity or a court of competent jurisdiction has issued an adjudication of paternity.

Deletes the requirement that the biological father's name be added to the birth certificate upon proof of paternity by DNA testing.

Requires all acknowledgments of paternity properly executed in Louisiana and adjudications of paternity adjudged in Louisiana to be filed with the office of vital records, pursuant to 42 U.S.C. 666(a)(5)(M).

Effective August 15, 2008. (Amends Ch. C. Arts. 1106(A) and (C), and R.S. 40:34(B)(1)(h)(ii) and (D); Adds R.S. 40:34(F); Repeals R.S. 40:34(B)(1)(h)(vi))

## 17. Broome (SB 758)

Act No. 778

Provides in an **intrafamily adoption**, that the consent of the parent to the adoption of a child may be dispensed with upon proof of clear and convincing evidence.

Provides that the child and the parent each have the **right to be represented** by separate counsel if the petition seeks to terminate parental rights of a parent whose consent is required. If there is opposition, the court shall appoint a qualified, independent attorney to represent the child, and that the costs of representation be taxed as costs of court. An attorney shall be appointed to represent the parent and if the court determines that the parent is indigent and financially unable to afford counsel the costs may be taxed as court costs.

Requires notice of the filing of the petition to be issued by the clerk and served together with a copy of the petition on every parent whose consent to the adoption is required and to inform the natural parent of their rights. Requires the notice to advise the person of the details of the court hearing and their right to hire an attorney, call witnesses, and cross-examine witnesses.

Effective August 15, 2008. (Amends Ch.C. Arts. Article 1245(A) and 1247(B); Adds Ch.C. Art. 1245.1)

**18. Greene (HB 283)**

**VETOED**

Would have eliminated the right of an authorized person to file a child in need of care petition. Would have Authorized DSS to seek leave of court to file a child in need of care proceeding if there were reasonable grounds to do so.

Would have permitted counsel to obtain discovery regarding any matter, not privileged, which is relevant to the subject matter and would have prohibited the objection that the information sought by discovery would be inadmissible at trial if the information sought appeared reasonably calculated to lead to the discovery of admissible evidence.

Would have made the party requesting discovery responsible for any copying costs according to the uniform fee schedule, but an indigent child or parent would not be responsible for any costs.

Vetoed by the Governor, June 21, 2008.

## IV. PROPERTY

### 1. Quinn (SB 179)

Act No. 855

Provides that when a spouse **reserves the natural and civil fruits** of his **separate property**, a copy of the declaration shall be provided to the other spouse prior to its filing.

Provides that the declaration is effective when a copy is provided to the other spouse, and it is filed for registry in the conveyance records of the parish in which the immovable property is located. As to fruits of movables, the declaration is effective when a copy is provided to the other spouse, and it is filed for registry in the conveyance records of the parish in which the declarant is domiciled.

Provides for prospective application only and shall not apply to a declaration filed prior to the effective date of the Act.

Effective August 15, 2008. (Amends C.C. Art. 2339)

### 2. Tim Burns (HB 527)

Act No. 204

Upon recommendation of the Louisiana State Law Institute, provides for the continuous revision of the law on **donations**. The most significant changes include:

- (1) The right of return is subject to the right of a **good faith transferee** for value and provides that the donee and his successors are held accountable for losses sustained by the donor when the thing cannot be returned due to the rights acquired by a good faith transferee.
- (2) The act of donation shall **identify** both the donor and the donee and describe the object that is given and provides that the codal identification requirements are satisfied if the identity of the parties and the object of the donation are reasonably ascertainable from information contained in the act.
- (3) A donation of an incorporeal movable evidenced by a certificate, document, instrument, or other writing may be made by **authentic act** or as provided in special rules applicable to the particular kind of movable.
- (4) **Eliminates** the legal or conventional return as a ground for invalidating a donation and eliminates failing to provide food to the donor as a ground for revoking a donation for ingratitude.
- (5) The donee's principal obligation is to return the thing, in cases of revocation.
- (6) An action for **revocation** or rescission of a donation based on the nonperformance of conditions imposed on the donee is subject to the **prescription** of five years.

- (7) When the donee fails to fulfill the conditions, the immovable donated shall be returned to the donor, even if the donee has alienated, leased, or encumbered the immovable and when the donee is unable to return the thing in the condition it was in at the time of the donation, the donor may require its return and hold the donee accountable for any **diminution in value**.
- (8) The trial court has discretion to award restoration of fruits and products if the donee's failure to perform was due to his fault.

Effective January 1, 2009. (Amends C.C. Arts. 1467-1469 and 1523-1569.1)

### **3. Greene (HB 388)**

**Act No. 632**

Upon recommendation of the Louisiana State Law Institute, provides that things must serve to complete a building of the same general type in order to be **component parts**.

Things are component parts of a construction other than a building if they are attached to the construction and they serve the principal use of the construction.

Does not provide that any specific items or category of things are component parts of either a building or other construction as a matter of law, but does provide examples.

If the principal thing is a movable construction permanently attached to the ground, its accessories include things that would be component parts if the construction were immovable.

Effective July 1, 2008. (Amends C.C. Arts. 466 and 508)

### **4. Abramson (HB 1008)**

**Act No. 924**

Provides that upon recordation of an **act of immobilization**, the owner of a manufactured home or his agent shall file with the secretary of the DPS&C a certified copy of the act, he shall create an internet accessible searchable database providing a public record of each filing. However, the failure of the owner or his agent to file shall not impair the validity or enforceability of the act.

Authorizes an \$8 filing fee for creating the public record.

Effective January. 1, 2009. (Adds R.S. 9:1149.4(C) and (D) and R.S. 32:412.1(A)(3)(y))

**5. Gallot (HB 1031)**

**Act No. 809**

Authorizes the city of Ruston to expropriate property for streets, roads, drainage, water, utilities, sewerage, electric, or other capital projects, and repeals the sunset provision (Dec. 31, 2009).

Effective August 15, 2008. (Amends R.S. 19:135, 135.1(A), 135.2(3)(a), 135.3, 135.4, and 135.7(1); Repeals §2 of Act No. 1212 of the 2003 R.S. as amended by Act No. 538 of the 2006 R.S.)

**6. Burrell (HB 337)**

**Act No. 819**

Provides a comprehensive revision of statutes governing the payment and collection of property taxes and sales taxes and the adjudication of property, including redemption and procedures to quiet tax title and actions to annul tax sales.

Effective January 1, 2009. (Adds R.S. 47:2121-2292; Repeals R.S. 13:4951, R.S. 33:2861-2892.9, R.S. 33:4720.11- 4720.49, R.S. 47:2101-2114, and R.S. 47:2171-2262)

## V. MORTGAGES, SECURITY DEVICES, AND PRIVILEGES

### 1. Henry (HB 134)

Act No. 339

Provides that, for immovable property procured pursuant to a judicial sale under a writ of fieri facias or a writ of seizure and sale, the clerk of court or the recorder of mortgages shall partially **cancel** from a mortgage certificate the inscription of any **legal or judicial mortgage, lien, or privilege** appearing on the certificate, upon the filing of an affidavit executed by an officer of a **licensed title insurer**.

Provides for the contents of the affidavit, provides that the clerk of court or recorder of mortgages shall attach the affidavit and cancel the inscriptions, and provides that the sheriff shall proceed with the judicial sale which shall be made **free and clear** of any canceled inscription.

Provides a **cause of action** against the title insurer in the event the legal or judicial mortgage, lien, or privilege partially canceled from the clerk's certificate was legally enforceable because the obligor was in fact the same person whose property was sold.

Provides that the cause of action **prescribes** on the same date that the cause of action to enforce the underlying legal or judicial mortgage, lien, or privilege prescribes.

Provides that a title insurer providing an affidavit containing incorrect statements is **liable to and shall defend and indemnify the clerk of court** or the recorder of mortgages, the sheriff, and any person relying upon the cancellation for any damages that they may suffer as a consequence of such reliance, and provides an exemption from liability to the clerk of court and the recorder of mortgages.

Effective August 15, 2008. (Adds R.S. 13:4344.1)

### 2. Abramson (HB 768)

Act No. 828

Authorizes any interested party to **cancel the notice of seizure** of property affected by the mortgage upon submitting a request to cancel evidencing that the mortgage has been canceled and evidence that all costs due to the clerk of court and sheriff are paid in full.

Provides that notice of seizure **prescribes 10 years** after the date of recordation unless it is reinscribed.

Provides that any interested party may obtain cancellation of the notice of seizure on the basis of prescription of 10 years without submitting evidence that all costs due to the clerk of court and sheriff have been paid in full.

Effective August 15, 2008. (Amends C.C.P. Art. 2293(D))

### 3. Quinn (SB 93)

Act No. 183

Requires that notices of **federal liens upon vessels** subject to the Vessel Titling Act not held as inventory for sale or lease be filed only with the clerk of court of any parish and with the recorder of mortgages in Orleans Parish for inclusion in the master index of information maintained by the secretary of state.

Effective August 15, 2008. (Amends R.S. 52:52(C)(1))

### 4. Duplessis (SB 426)

Act No. 236

Provides that if the consumer or his designee tenders to the lender or holder **payment in full** in an amount derived from the outstanding balance information, then the lender or holder shall accept the amount as payment in full. Upon such payment, the lender or holder shall **release the lender's or holder's lien** against the **motor vehicle**, and return the title or a lien satisfaction certificate with sufficient funds to obtain a duplicate title to the consumer no later than 14 days after the date on which payment was received. If the lender or holder fails to return the title, then they must provide sufficient funds to the consumer so that a duplicate title may be obtained.

Provides that a payment in cash or certified funds is deemed to be received on the date that the lender or holder receives payment. Further provides that all other forms of payment are deemed to be received on the date that the lender or the holder receives notice that the financial institution upon which payment is drawn has honored the payment.

Effective August 15, 2008. (Adds R.S. 6:969.20(D))

### 5. Edwards (HB 1067)

Act No. 651

When a **promissory note** paraphed for identification with a mortgage or act creating a vendor's privilege on immovable property has been **lost or destroyed**, the maker of the note or any interested party may prove its payment by presentation of a sworn affidavit of the obligee of record specifically attesting to the truth of all of the allegations required.

Requires that the affidavit set forth the following: (1) the name of the mortgagor or obligor and recordation information; (2) a description of the note and the encumbered immovable property; (3) the affiant is the obligee of record; (4) the note has been lost or destroyed; (5) the note is paid, forgiven, or otherwise satisfied; (6) the affiant authorizes the cancellation of the inscription; (7) the affiant has not sold, transferred, or assigned the note; and (8) the affiant agrees to be personally liable to and indemnify the clerk of court and ex officio recorder of mortgages and any person or entity relying upon the cancellation.

An affidavit executed according to these provisions may be substituted for the original paraphed note.

Provides that the clerk of court and ex officio recorder of mortgages shall not refuse to accept an affidavit and shall **not** require the filing of a **mandamus proceeding** as a condition of canceling.

Provides for retroactive application.

Effective August 15, 2008. (Adds R.S. 9:5168)

**6. Barras (HB 1230)**

**Act No. 611**

Regarding a **privilege in favor of health care providers**, hospitals, and ambulance services against proceeds recovered by injured persons, **notice** of the privilege may be **by facsimile** transmission with proof of receipt of transmission, but if a signed receipt of the facsimile transmission is not obtained within seven days, notice shall be sent by certified mail, return receipt requested, with the costs of mailing being taxed as court costs.

Effective August 15, 2008. (Amends R.S. 9:4753)



## VI. LABOR AND WORKER'S COMPENSATION

### 1. Ponti (HB 535)

Act No. 703

Requires the payment of **death benefits** to dependents of injured workers to be computed and divided equally among the dependents.

Effective August 15, 2008. (Amends R.S. 23:1232)

### 2. Baldone (HB 738)

Act No. 364

Adds an exception that **minors under the age of 14 may be employed** under all of the following conditions: (1) the minor is at least 12 years old; (2) the minor's parent or legal guardian is an owner or partner in the business in which the minor is to be employed; (3) the parent or guardian who owns or is a partner in the business shall directly supervise the minor; (4) minors 12 and 13 years old shall be afforded all the protections that are given to 14 and 15 year old minors; (5) the minor obtains an employment certificate.

Effective June 21, 2008. (Amends R.S. 23:162)

### 3. Honey (HB 1165)

Act No. 169

Provides for an **increase in the weekly benefit** amount of unemployment compensation, establishes the duration of benefits, and creates a reduction in unemployment compensation contributions for employers.

Effective June 12, 2008. (Amends R.S. 23:1474(I), 1592(E), and 1595(A); Adds R.S. 23:1536(E)(4))

### 4. Kostelka (SB 679)

Act No. 793

Regarding the required notice of intent to file a civil suit claiming **employment discrimination**, provides that **no interruption of prescription** shall flow from either the giving or the failure to give the notice.

Effective August 15, 2008. (Adds R.S. 23:303(E))

## VII. CRIMINAL JUSTICE

### A. NEW CRIMES

#### 1. Austin Badon (HB 73)

Act No. 622

Prohibits the **supplying of a felon with ammunition**.

Penalties: Imprisonment of not more than five years and a fine of not less than \$1,000 nor more than \$5,000.

Effective August 15, 2008. (Adds R.S. 14:95.1.2)

#### 2. White (HB 96)

Act No. 6

Provides that **home invasion** is the unauthorized entering of any inhabited dwelling, or other structure belonging to another and used in whole or in part as a home or place of abode by a person, where a person is present, with the intent to use force or violence upon the person of another or to vandalize, deface, or damage the property of another.

Penalties:

- (1) A fine of not more than \$5,000 or imprisonment at hard labor for not less than five nor more than 25 years; at least five years of the sentence imposed shall be served without benefit of parole, probation, or suspension of sentence.
- (2) If at the time of the unauthorized entering, there is present in the dwelling or structure any person who is under the age of 12 years, is 65 years of age or older, or has a developmental disability, the offender shall be fined not more than \$10,000 and shall be imprisoned for not less than 10 nor more than 25 years; at least 10 years of the sentence imposed shall be served without benefit of parole, probation, or suspension of sentence.

Effective August 15, 2008. (Adds R.S. 14:62.8)

#### 3. Hill (HB 137)

Act No. 253

Provides that it shall be unlawful for any person to knowingly or intentionally produce, manufacture, distribute, or possess **fraudulent documents for identification purposes**.

Defines "fraudulent documents for identification purposes" as documents which are presented as being bona fide documents which provide personal identification information but which are, in fact, false, forged, altered, or counterfeit.

Penalties: a fine of not more than \$500 or imprisonment for not more than six months or both; and for distributing, manufacturing, or producing a fraudulent document, a fine of not more than \$5,000 or imprisonment, with or without hard labor, for not more than three years, or both.

Effective August 15, 2008. (Adds R.S. 14:70.7)

#### **4. Ligi (HB 163)**

#### **Act No. 8**

Repeals provision of misdemeanor **criminal damage to property** regarding graffiti.

Provides that it shall be unlawful for any person to **intentionally deface with graffiti** immovable or movable property, whether publicly or privately owned, without the consent of the owner.

Provides penalties based upon the amount of damage done to the property as follows:

- (1) If the damage is less than \$500, the offender shall be fined not more than \$500 or imprisoned for not more than six months in the parish jail, or both.
- (2) If the damage is more than \$500 but less than \$50,000, the offender shall be fined not more than \$1,000 or imprisoned with or without hard labor for not more than two years, or both.
- (3) If the damage amounts to \$50,000 or more, the offender shall be fined not more than \$10,000 or imprisoned with or without hard labor for not less than one nor more than 10 years, or both.

Provides that the court may order the offender to clean up, repair, or replace any property damaged by the act or to pay restitution to the owner of the damaged property.

Provides that the court may order the offender to perform hours of community service:

- (1) For a first conviction, not to exceed 32 hours over a period not to exceed 180 days.
- (2) For a second or subsequent conviction, 64 hours over a period not to exceed 180 days.

Provides that if a minor is personally unable to pay a fine levied or make restitution as may be ordered by the court, the parent or guardian of the minor shall be liable for payment of the fine or restitution. A court may waive payment of the fine or restitution, or any part thereof, by the parent or guardian of the minor upon a finding of good cause.

Effective August 15, 2008. (Adds R.S. 14:56.4; Repeals R.S. 14:59(A)(10))

**5. Wooton (HB 413)**

**Act No. 633**

Creates the crime of **theft of a motor vehicle**. Provides for a procedure in which a person who alleges a theft of a motor vehicle shall sign an affidavit which indicates that the allegation of theft is true, and the person who falsely reports a theft of a motor vehicle may be prosecuted.

Provides for penalties based upon the value of the motor vehicle which is taken and for falsely reporting a theft of a motor vehicle.

Effective August 15, 2008. (Adds R.S. 14:67.26)

**6. Henry Burns (HB 478)**

**Act No. 491**

Creates the crime of **resisting an officer with force or violence** and provides that the crime is committed when the offender knows or has reason to know that the officer is acting in his official capacity and the offender through the use of violence or threats of violence seeks to interfere with the duties of the police officer.

Penalties: A fine of not more than \$2,000 or imprisoned with or without hard labor for not less than one year nor more than three years, or both. At least 60 days of the sentence imposed shall be served without benefit of parole, probation, or suspension of sentence.

Effective August 15, 2008. (Adds R.S. 14:108.2)

**7. Schroder (HB 632)**

**Act No. 86**

Prohibits person from **knowingly and intentionally possessing**, selling, duplicating, distributing, transferring, or copying any films, recordings, videotapes, audio tapes, or other visual, audio, or written reproductions of any recording of **videotapes of protected persons** provided in R.S. 15:440.1 et seq.

Exempts persons acting pursuant to a court order or by persons who in the course and scope of their office or employment are lawfully in possession of the videotape.

Penalties: A fine of not more than \$500, imprisonment for not more than six months, or both.

Effective August 15, 2008. (Adds R.S. 14:81.5)

**8. Willmott (HB 662)**

**Act No. 292**

Creates the crime of **home improvement fraud**.

Provides that home improvement fraud is committed when a person who has contracted to perform any home improvement, or who has subcontracted for the performance of any home

improvement, hereinafter referred to as "contractor", knowingly engages in any of the following actions:

- (1) The failure to perform any work during a 45 day period of time or longer after receiving payment.
- (2) The use by a contractor, or by an agent or employee of a contractor, of any deception, false pretense, or false promise to cause any person to enter into a contract for home improvements.
- (3) The damaging of any property of any person, by a contractor, or by an agent or employee of a contractor, with the intent to induce that person to enter into a contract for home improvements.

Penalties:

- (1) A fine of not more than \$1,000 or imprisonment for not more than six months, or both.
- (2) For a second or subsequent offense, or when the person with whom the contract for home improvements is entered into is a disabled person, or a person 60 years of age or older, shall be fined not more than \$10,000 or imprisoned, with or without hard labor, for not more than five years, or both. Lack of knowledge of the person's age or disability shall not be a defense. Restitution may be ordered at the discretion of the court.

Effective August 15, 2008. (Adds R.S. 14:202.1)

**9. Hardy (HB 726)**

**Act No. 643**

Provides that it shall be unlawful for any person, with the intent to **intimidate any person** or group of persons, to etch, paint, draw, or otherwise place or display a **hangman's noose** on the property of another, a highway, or other public place.

Penalties: A fine of not more than \$5,000 and imprisonment with or without hard labor for not more than one year, or both.

Effective August 15, 2008. (Adds R.S. 14:40.5)

**10. Hazel (HB 1153)**

**Act No. 747**

Prohibits wearing or **possessing of body armor on school property**, at school-sponsored functions, and in firearm-free zones.

Penalties: A fine of not more than \$1,000, or imprisoned, without hard labor, for not less than six months nor more than one year, or both.

Notice requirements: School officials shall notify all students and parents of the impact of this legislation and shall post notices of the impact of this Section at each major point of entry to the school.

More Penalties: Any principal or school official in charge who fails to report the detention of a student or the seizure of body armor to a law enforcement agency as required may be issued a misdemeanor summons.

Effective August 15, 2008. (Adds R.S. 14:95.9)

## **11. LaFonta (HB 1243)**

**Act No. 657**

Creates the crime of **theft of copper** from a church, synagogue, mosque, cemetery, or graveyard.

Penalties: When the theft of copper is valued at least \$1,000, the offender shall be imprisoned for not less than five years, and not more than 10 years, or be fined not more than \$5,000, or both. When the theft of copper is valued at \$500 or more but less than \$1,000, the offender shall be imprisoned for not less than two years, and not more than five years, or be fined an amount not more than \$2,000, or both. When the theft of copper is valued under \$500, the offender shall be imprisoned for not less than one year, and not more than two years, or be fined an amount not more than \$1,000, or both.

Provides that when the offender is convicted for subsequent offenses, he shall be imprisoned for not more than 10 years, or be fined not more than \$5,000, or both.

Effective August 15, 2008. (Adds R.S. 14:67.26)

## **12. Norton (HB 1374)**

**Act No. 660**

Provides that it shall be unlawful for a person who is either a principal or accessory to a crime to **obtain an image of the commission of the crime using any camera**, videotape, photo-optical, photo-electric, or any other image recording device and to **transfer that image obtained during the commission of the crime by the use of a computer Internet service**, online service, or any other means of electronic communication, including but not limited to a local bulletin board service, Internet chat room, electronic mail, or online messaging service for the purpose of gaining notoriety, publicity, or the attention of the public.

Provides for exceptions for Internet providers, news media, and law enforcement.

Penalties: A fine of \$500 or imprisonment for not more than six months, or both.

Effective August 15, 2008. (Adds R.S. 14:107.4)

### 13. Hazel (HB 1203)

Act No. 170

Defines the **theft of timber** as the misappropriation or taking of timber belonging to another or proceeds derived from the sale of the timber, either taken without the consent of the owner, or by means of fraudulent conduct, practices, or representations, with the intent to deprive the owner permanently of the timber or proceeds derived therefrom.

#### Penalties:

- (1) When the taking amounts to a value of \$25,000 or more, the offender shall be fined not more than \$10,000 and imprisoned at hard labor for not more than 10 years.
- (2) When the taking amounts to a value of less than \$25,000, the offender shall be imprisoned, with or without hard labor, for not more than five years, fined not more than \$5,000, or both.

Effective August 15, 2008. (Amends R.S. 14:67.12)

## B. OTHER CRIMINAL MATTERS

### 1. Ponti (HB 634)

Act No. 291

Prohibits a person who has been charged for **any crime of violence** or any immediate family member of such person from **communicating with a victim of the offense** or with any immediate family member of the victim. Provides for exceptions, including when the victim consents to the communication.

Provides for a maximum fine of \$500, imprisonment for not more than six months, or both.

Effective August 15, 2008. (Adds R.S. 46:1846)

### 2. Leger (HB 45)

Act No. 4

Amends the law prohibiting persons from **intimidating, impeding, or injuring witnesses** with the intent to **influence testimony**, the reporting of criminal conduct, or the appearance at a judicial proceeding by making such law applicable to the immediate family member of a witness or officer of the court.

Provides for the following penalties when the intimidation occurs in a criminal proceeding:

- (1) A fine of not more than \$100,000, imprisonment for not more than 40 years at hard labor, or both when the underlying criminal proceeding involves an offense for which a sentence of death or life imprisonment may be imposed.
- (2) A fine of not more than \$50,000, or imprisonment for not more than 20 years at hard labor, or both, when the underlying criminal proceeding involves an offense for

which a sentence of imprisonment necessarily at hard labor for any period less than a life sentence may be imposed.

- (3) A fine of not more than \$10,000, imprisonment for not more than five years, with or without hard labor, or both when the underlying criminal proceeding involves an offense for which any other sentence may be imposed.

Effective August 15, 2008. (Amends R.S. 14:129.1)

### **3. Perry (HB 332)**

**Act No. 269**

Provides that property which was given, offered, or accepted during the commission of the crime of **public bribery** shall be deemed to be contraband and shall be subject to seizure and forfeiture. Authorizes the district attorney to petition the court to forfeit the property seized in connection with public bribery. Provides that property forfeited shall be disposed of as follows:

- (1) When the property is not cash or currency, it shall be disposed of pursuant to the provisions of R.S. 15:41.
- (2) When the property consists of cash or currency, it shall be forfeited and distributed as follows:
  - (a) 55% to the law enforcement agency or agencies who investigated the crime.
  - (b) 15% to the criminal court fund.
  - (c) 25% to the prosecuting authority that prosecuted the crime.
  - (d) 5% to the clerk of court.

Provides for the return of the property to the owner if the charges are dismissed or if the accused is acquitted.

Effective August 15, 2008. (Adds R.S. 14:118(D), (E), and (F))

### **4. Wooton (HB 434)**

**Act No. 149**

Adds violations of **Louisiana Securities Law** to the definition of "**racketeering activity**", allowing securities violations to be prosecuted under the Louisiana Racketeering Act.

Increases penalties for a willful violation of a provision of the La. Securities Law to include a fine of not more than \$10,000, imprisonment at hard labor for not more than five years, or both. Authorizes court to order the offender to pay restitution.

Effective August 15, 2008. (Amends R.S. 15:1352(A)(intro. para.) and R.S. 51:723(A) and (B); Adds R.S. 15:1352(A)(18))



**5. Schroder (HB 643)**

**Act No. 640**

Provides that the **10-year cleansing period** for purposes of determining whether a defendant has a prior **DWI conviction** shall not include time in which the defendant is awaiting trial, on probation, or under an order of attachment for failure to appear.

Effective August 15, 2008. (Amends R.S. 14:98(F)(2))

**6. Ponti (HB 786)**

**Act No. 161**

Increases the minimum mandatory sentence for **3rd DWI offenders** from 30 days to 45 days, and for **4th DWI offenders** from 60 to 75 days, and requires court-approved community service as a condition of probation.

Effective August 15, 2008. (Amends R.S. 14:98(D)(1)(a) and (b)(intro. para.) and (E)(1)(a) and (b)(intro. para.))

**7. Amedee (SB 517)**

**Act No. 462**

Requires **lifetime sex offender registration** for certain offenders convicted of sexual battery, aggravated incest or molestation of a juvenile when the victim is under age thirteen.

Provides for a procedure to extend the duration of registration and notification requirements for the lifetime of those sex offenders who pose a substantial risk of committing another sex offense. Requires either a plea agreement entered into by the district attorney and the offender, or a showing by a preponderance of the evidence, in a contradictory hearing.

Effective June 25, 2008. (Amends R.S. 15:541(1)(d) through (k) and 544(A), (B), (C), and (D)(3); Adds R.S. 15:541(I)(l) and (m) and 544(E))

## VIII. INSURANCE

### 1. Kleckley (HB 333)

Act No. 15

Specifies that certain acts relative to **proof of insurance cards** or documents are **fraudulent insurance acts**. Provides for penalties and restitution for fraudulent insurance acts. Specifically makes mere possession of a fraudulent proof of an insurance card or document a misdemeanor.

Effective August 15, 2008. (Amends R.S. 22:1243(A) and 1244(A); Adds R.S. 22:1242(1)(h) and (i))

### 2. Wooton (HB 241)

Act No. 628

Provides that forgery of a certificate of insurance or insurance identification card is either of the following:

- (1) The knowing or intentional production, manufacture, or distribution of any fraudulent document intended as a certificate of insurance or as proof of insurance.
- (2) The knowing or intentional possession of any fraudulent document intended as a certificate of insurance or as proof of insurance.

Penalties: depends on the type of fraud committed.

Effective August 15, 2008. (Adds R.S. 14:72.1.1)

### 3. Ponti (HB 1312)

Act No. 921

Increases the **minimum motor vehicle liability insurance** limit for bodily injury to or death of one person from \$10,000 to \$15,000; increases the minimum liability for the bodily injury to or death of two or more persons from \$20,000 to \$30,000; and increases the minimum liability limit for bodily injury or destruction to property in any one accident from \$10,000 to \$25,000.

Changes the **minimum motor vehicle bond amount** for the bodily injury to or death of one person from \$10,000 to \$15,000 and the amount for the bodily injury to or death of more than one person from \$20,000 to \$30,000. Increases the deposit an applicant for registration must submit with the state treasurer from \$30,000 to \$55,000.

Increases the recovery amount by an insurer for **subrogation claims** paid under the applicable insurance policy from \$10,000 to \$15,000 of bodily injury and property damages.

Changes the amount credited upon a judgment rendered in excess due to bodily injury to or death of one person from \$10,000 to \$15,000.

Effective Jan. 1, 2009. (Amends R.S. 32:861(B)(2), (C)(1)(a) and (b), 866(A)(1) and (F), 894(A), and 900(B)(2)(a), (b), and (c))

**4. Cravins (SB 240)**

**Act No. 687**

Changes the limits of liability of LIGA from \$150,000 to \$300,000 combined single limits.

Effective August 15, 2008. (Amends R.S. 22:1382(A)(1)(a))

## **IX. JUDICIAL AFFAIRS**

### **A. GENERAL PROVISIONS**

#### **1. Murray (SB 166)**

**Act No. 873**

Retains the existing provisions Act 621 of the 2006 Regular Session \* relative to the consolidation of courts in Orleans Parish into the 41<sup>st</sup> JDC and relative to the repeal of provisions regarding certain court employees and officers due to the consolidation, but changes the effective and repeal dates from Jan. 1, 2010 to Dec. 31, 2014.

Provides that when the 41<sup>st</sup> JDC comes into existence, that the judges elected to the Civil District Court and the Criminal District Court, and the magistrate judge are to finish the term of office as judges of the 41<sup>st</sup> JDC.

Provides that the judges elected to take office on Jan. 1, 2009, and presiding over Divisions A through N of the Civil District Court for the parish of Orleans shall continue to preside over those divisions until Dec. 31, 2014, at which time they shall preside over Divisions A through N of the 41<sup>st</sup> JDC. The judges shall continue to serve until Dec. 31<sup>st</sup> of the year in which their terms expire.

Provides that the judges elected to take office on Jan. 1, 2009, and presiding over Divisions A through L of the Criminal District Court for the parish of Orleans shall continue to preside over those divisions until Dec. 31, 2014, at which time they shall preside over Divisions O through Z of the 41<sup>st</sup> JDC. The judges shall continue to serve until Dec. 31<sup>st</sup> of the year in which their terms expire.

Requires the clerk of the 41<sup>st</sup> JDC to deposit at least 60% of specified fees into the Clerk's Salary Fund and the remaining fees to be deposited into the Consolidated Judicial Expense Fund.

Provides that until a single clerk for the 41<sup>st</sup> JDC is elected, as it relates to the collection of civil filing fees only, the clerk means the clerk of the Civil District Court and the clerk of the Criminal District Court.

Authorizes the clerk and chief judge of the 41<sup>st</sup> JDC on and after Jan. 1, 2009 to renegotiate the 60% of monies in the Clerk's Salary Fund but that such shall not be reduced below 50% of the civil filing fees collected by the clerk.

Retains provisions that the clerk of court for the Civil District Court and the clerk of court for the Criminal District Court serve as clerk for the 41<sup>st</sup> JDC, civil section and criminal section, respectively, but changes the Jan. 1, 2009 effective date to Jan. 1, 2015.

Provides that the magistrate judge elected to take office on Jan. 1, 2009, and presiding over the magistrate section of the Criminal District Court continue to preside until Dec. 31, 2014, at which time he shall preside over the magistrate division of the 41<sup>st</sup> JDC and that he continue to serve until Dec. 31<sup>st</sup> of the year in which his term expires.

Provides that the four magistrate commissioners appointed to the Criminal District Court continue to preside in those sections until Dec. 31, 2014, at which time they shall preside in the magistrate divisions of the 41<sup>st</sup> JDC and continue to serve until June 30<sup>th</sup> of the year in which their terms expire.

Authorizes a U.S. district judge in a municipality with a population in excess of 470,000 according to the latest decennial census to perform marriage ceremonies within his official duty station during Nov. 2008.

**Provides that this Act No. 873 shall supersede and control to the extent of any conflict with Act 675 of the 2008 Regular Session.**

*\*Katz, et al v. State, et al.* , No. 0716105, 5/13/08, Judge Melvin Shortess, Ad-Hoc, Civil District Court for Parish of Orleans ruled that (1) part of Act 621 of the 2006 R.S. that pertains to the creation of the 41<sup>st</sup> JDC violates La. Const. Art. 5, §15(B) for failure to get approval in a referendum of the voters of Orleans Parish and is unconstitutional and (2) portions of Act 621 pertaining to the CDC and CrDC and clerks thereof, Civil and Criminal Sheriffs, Register of Conveyances, and Recorder of Mortgages are not unconstitutional and severable from unconstitutional provisions.

Effective upon signature of the governor (July 9, 2008). (Amends Sections 19(A), 21(C), 22, 23(C) and (D) and 30 of Act No. 621 of the 2006 R.S. and R.S. 13:751.1(A)(2); adds Section 19(C) of Act No. 621 of the 2006 R.S. and R.S. 9:203(E)(6))

## **2. Murray (SB 625)**

**Act No. 675**

**Note: Act No. 873 shall supersede and control to the extent of any conflict with Act 675 of the 2008 Regular Session.**

Provides that when the 41<sup>st</sup> JDC comes into existence, the judges elected to the Civil District Court and the Criminal District Court, and the magistrate judge are to finish the term of office as judges of the 41<sup>st</sup> JDC.

Provides that the judges elected to take office on Jan. 1, 2009, and presiding over Divisions A through N of the Civil District Court for the parish of Orleans shall continue to preside over those divisions until May 3, 2010, at which time they shall preside over Divisions A through N of the 41<sup>st</sup> JDC. The judges shall continue to serve until Dec. 31<sup>st</sup> of the year in which their terms expire.

Provides that the judges elected to take office on Jan. 1, 2009, and presiding over Divisions A through L of the Criminal District Court for the parish of Orleans shall continue to preside over those divisions until May 3, 2010, at which time they shall preside over Divisions O through Z of the 41<sup>st</sup> JDC. The judges shall continue to serve until Dec. 31<sup>st</sup> of the year in which their terms expire.

Requires the clerk of the 41<sup>st</sup> JDC to deposit at least 60% of specified fees into the Clerk's Salary Fund and the remaining fees to be deposited into the Consolidated Judicial Expense Fund.

Provides that until a single clerk for the 41<sup>st</sup> JDC is elected, as it relates to the collection of civil filing fees only, the clerk means the clerk of the Civil District Court.

Provides that the magistrate judge elected to take office on Jan. 1, 2009, and presiding over the magistrate section of the Criminal District Court continue to preside until May 3, 2010, at which time he shall preside over the magistrate division of the 41<sup>st</sup> JDC and that he continue to serve until Dec. 31<sup>st</sup> of the year in which his term expires.

Provides that the four magistrate commissioners appointed to the Criminal District Court continue to preside in those sections until May 3, 2010, at which time they shall preside in the magistrate divisions of the 41<sup>st</sup> JDC and continue to serve until June 30<sup>th</sup> of the year in which their terms expire.

Authorizes a U.S. district judge in a municipality with a population in excess of 470,000 according to the latest decennial census to perform marriage ceremonies within his official duty station during November, 2008.

Effective upon signature of the governor (July 1, 2008). (Amends Sections 19(A), 21(C), 22 and 30 of Act No. 621 of the 2006 R.S. and R.S. 13:751.1; adds R.S. 9:203(E)(6))

### **3. Murray (SB 579)**

**Act No. 868**

Changes the name of the Clerk's Operational Fund to the Clerk's Salary Fund in which the clerk of the 41<sup>st</sup> Judicial District Court is to deposit 60% or more of collected fees.

Provides that until a single clerk of court for the 41<sup>st</sup> JDC is elected, as it relates to the collection of civil filing fees only, the clerk shall mean the clerk of the Civil District Court.

Changes the requirement that the clerk of the 41<sup>st</sup> JDC shall deposit certain fees collected into the Consolidated Judicial Expense Fund to authorizing the clerk to deposit the funds into the Consolidated Judicial Expense Fund or Clerk's Salary Fund.

Provisions amending R.S. 13:983(L) and Section 8(A)(1) of Act 621 of the 2006 R.S. effective 1/1/09. Remaining provisions of proposed law effective 8/15/08. (Amends R.S. 13:841.3 and 983(L), R.S. 44:183(F), and Section 8(A)(1) of Act 621 of the 2006 R.S.)

### **4. Edwards (HB 497)**

**Act No. 215**

Provides that certain fees collected by the 21<sup>st</sup> JDC may be expended for the **Internet-based Document Electronic Access System**.

Effective August 15, 2008. (Amends R.S. 13:841.2)

**5. Ellington (HB 17)**

**Act No. 713**

Provides that in the 37th JDC, the **judge shall determine** the amount to be paid for each page of testimony reported and transcribed, which fee shall not exceed \$2.75 for each 32-line page and 25¢ per copy per page of transcribed testimony.

Effective August 15, 2008. (Adds R.S. 13:961(F)(1)(t))

**6. Henry (HB 136)**

**Act No. 625**

Changes the time frame for the clerks of court to **destroy** the following **records** if they are deemed to have no further value and when no action has been taken on them from at least 25 years to 10 years: suits on open accounts, suits involving tort claims, and suits on workers' compensation, unsecured notes, promissory notes, chattel mortgages, and eviction of tenants and occupants. **No cause of action** shall exist against any clerk or judge for the destruction of records in accordance with law.

Effective August 15, 2008. (Amends R.S. 13:917(A); Adds R.S. 13:2562.26)

**7. Richmond (HB 530)**  
**Duplessis (SB 608)**

**Act No. 635**

**Act No. 674**

Extends the term of office of the judges of the **Orleans parish juvenile court** filled by a vacancy from December 31, 2008 to December 31, 2014.

Effective July 1, 2008. (Amends R.S. 13:621.44(A))

**8. Henry (HB 828)**

**Act No. 368**

Authorizes, **but does not require**, a recorder to adopt a **written contract** between the clerk of court, the Orleans Parish register of conveyances, or its successor, or the Orleans Parish recorder of mortgages, or its successor, and the filer which complies with the **Louisiana Uniform Electronic Transactions Act**.

Authorizes any person to file the electronic instrument and deletes language providing that the list of exceptions is nonexclusive.

Deletes the requirement to file the written instrument from which the electronic record is taken within 10 days of the electronic filing.

Effective August 15, 2008. (Amends C.C.P. Art. 258(A) and (C))

**9. Quinn (SB 91)**

**Act No. 344**

Increases the **judgeships** for the 22nd JDC from 10 to 12 and provides that the two new divisions shall have district-wide jurisdiction over **family and juvenile matters**.

Effective June 23, 2008. (Amends R.S. 13:621.22)

**10. Murray (SB 613)**

**Act No. 879**

Provides that the 41<sup>st</sup> JDC will employ not less than 26 law clerks.

Deletes provisions abolishing the Orleans Parish Juvenile Court of December 31, 2014, and provides that successors to office of the Orleans Parish Juvenile Court shall be elected at the congressional election in 2014.

Authorizes a U.S. district court judge whose official duty station includes a municipality having a population in excess of 470,000 according to the latest decennial census to **perform marriage ceremonies** within his official duty station. Provides that this authority is effective only from November 1, 2008, through November 30, 2008.

Effective August 15, 2008. (Amends R.S. 13:621.41(B)(1), (D), (E), (F)(1), (H)(1) and (3), 621.43, 621.44(A), 621.45(B), 1136, 1137, 1140(A) (intro. para.), (B) and (C), 1335, and 1336; Adds R.S. 9:203(E)(6))

**11. Shepherd (SB 429)**

**VETOED**

Would have provided that the 24<sup>th</sup> JDC consist of seven election sections pursuant to the consent decree in the matter entitled "Janice Clark, et al v. Edwin W. Edwards, et al," No. 86-435-A, United States District Court, Middle District of Louisiana, including election section 5 as a minority section, consisting of Division C and P and the next vacancy in a judgeship which occurs after January 1, 2009, other than a vacancy in either Division C or Division P, must be filled by election from election section 5, the minority section. Thereafter, the remaining judgeships were to continue to be filled from the remaining election sections.

Vetoed by the Governor, July 15, 2008.

**B. COURTS OF LIMITED JURISDICTION**

**1. Cromer (HB 144)**

**Act No. 196**

Increases from 5 to 8 the number of years a Slidell City Court judge is required to have been licensed to practice law prior to his election.

Effective August 15, 2008. (Amends R.S. 13:2487.2)



**2. Richardson (HB 10)**

**Act No. 615**

Creates a **mayor's court** for the **city of Central** and provides that the territorial jurisdiction of the court shall extend throughout the city of Central, East Baton Rouge Parish.

Effective July 1, 2008. (Adds R.S. 33:452)

**3. Richardson (HB 12)**

**Act No. 616**

Provides that the **mayor of the city of Central** may appoint a court magistrate who shall serve at the pleasure of the mayor and exercise the powers and authority of the mayor over the court.

Effective July 1, 2008. (Adds R.S. 33:441.31)

**4. Johnson (HB 27)**

**Act No. 192**

Requires the board of aldermen of the town of **Evergreen** to appoint an attorney to preside over the mayor's court as magistrate when requested to do so by the mayor and requires the magistrate to exercise the powers and authority of the mayor over the court.

Effective August 15, 2008. (Adds R.S. 33:452)

**5. Monica (HB 129)**

**Act No. 338**

Increases the civil jurisdictional amount in dispute from \$3,500 to \$5,000 for **justice of the peace** courts in suits for the possession or ownership of movable property by landlords or lessors, for the eviction of occupants or tenants of leased residential premises, and in suits by landlords or lessors for the eviction of occupants or tenants of leased commercial premises and leased farmlands where the amount of the monthly rental does not exceed \$5,000.

Effective August 15, 2008. (Amends C.C.P. Arts. 4911(A) and 4912(A)(1) and (B))

**6. Geymann (HB 138)**

**Act No. 340**

Authorizes a constable of a justice of the peace court to effectuate service of process within the parish of that court.

Effective August 15, 2008. (Adds R.S. 13:2586(F))

**7. Cromer (HB 143)**

**Act No. 195**

Provides that in the Slidell City Court, small claims division, the civil jurisdictional amount in controversy shall be the same as the amount established for civil jurisdiction in a justice of the peace court.

Effective August 15, 2008. (Adds R.S. 13:5202(E))

**8. Schroder (HB 879)**

**Act No. 372**

Reduces the number of justices of the peace in Ward 3 of St. Tammany Parish from two to one but provides that the two offices of constable are continued.

Effective June 21, 2008. (Adds R.S. 13:2620)

**9. Williams (HB 1204)**

**Act No. 656**

Provides that the justice of the peace courts in **Caddo Parish** shall have concurrent jurisdiction with district courts over property standards violations in the district.

Provides that the constable of the justice of the peace court may issue summons and serve subpoenas for violations that occur in the district.

Provides that the justice of the peace courts and constable offices in Caddo Parish shall be reimbursed for handling property standards violations.

Effective August 15, 2008. (Amends R.S. 13:2586(D); Adds R.S. 13:2586(C)(5) and 2589(C))

**10. Morrish (SB 55)**

**Act No. 44**

Adds the City Court of **Jennings** to those city courts having civil jurisdiction where the amount in dispute or the value of property involved does not exceed \$30,000.

Effective August 15, 2008. (Amends C.C.P. Art. 4843(F))

## X. MISCELLANEOUS

### 1. Waddell (HB 781)

Act No. 904

Specifies that if a person **licensed to practice law** in this state has changed his parish of residence, he is authorized to exercise the functions of a **notary public** in every parish of this state.

Prohibits any person, who has **not first been duly authorized** to exercise notarial powers in this state, or whose authority to exercise notarial powers in this state has been judicially revoked, from performing certain acts. Provides for a fine of not more than \$1,000 or imprisonment for not more than two years, or both, and full restitution for all costs and damages.

Prohibits a person who **has been duly appointed** to the office of notary public or who has been otherwise authorized to exercise notarial functions in this state from exercising any notarial functions under certain circumstances. Any person who **knowingly** violates this provision shall be fined not more than \$1,000, full restitution for all costs and damages, subject to a suspension or revocation of his commission, and being permanently enjoined from exercising any notarial function in any capacity.

Provides that the secretary of state, upon receipt of a sworn complaint alleging a violation of certain provisions, shall notify the complainant and the alleged offender if the alleged offender is properly in possession of the authority to exercise notarial functions.

Provides that if the records of the secretary of state indicate that the alleged offender does not have a valid active status, the secretary of state shall give written notice to the alleged offender by certified mail, return receipt requested, that the alleged offender has 10 days to remedy his impediment, if possible.

Provides that if the alleged offender fails to comply with the requirements provided in the notice, the secretary of state shall transmit a copy of the sworn complaint to the appropriate law enforcement authority for further investigation.

**Exempts attorneys** licensed to practice law in this state.

Specifies that an ex officio notary, whose duty includes **enforcement of criminal statutes**, is authorized to execute affidavits required for the enforcement of the DWI statutes (R.S. 32:661 through 669).

R.S. 35:191(P)(1) and 407(B) effective July 10, 2008. R.S. 32:661-669 effective August 15, 2008. (Amends R.S. 35:191(P)(1) and 407(B); Adds R.S. 35:601-604)

## 2. Dupre (SB 3)

Act No. 120

Authorizes the **mayor** in a municipality with a population of less than 5,000 to designate employees of his office as **ex officio notaries** to perform notarial duties for the municipal police department, and grants the authority to the mayor to suspend or terminate the ex officio notary.

Provides that separation from employment automatically terminates the employee's ex officio notarial powers.

Effective June 10, 2008. (Amends R.S. 35:407)

## 3. Duplessis (SB 285)

Act No. 856

Removes the "certificate of competency" requirement for the commission of a notary and allows the governor to appoint notaries public who meet the qualifications for office.

Provides that every **qualified notary public** is authorized to **certify true copies** of any authentic act or any instrument under private signature passed before him or acknowledged before him, and to make and certify copies, by any method, of any certificate, research, resolution, survey or other document annexed to the original of any authentic acts passed before him, and may certify copies as true copies of the original document attached to the original passed before him.

Provides **qualifications** to become a notary public in the parish in which a person resides.

Changes the location for filing the affidavit giving the location of his office and attesting to his appointment as a notary public in his parish of residence, from the district court to the office of the secretary of state to exercise authority in an adjacent parish.

Provides for numerous changes and additions to the **application process** through the office of the **secretary of state** in order to be appointed a notary public.

Effective on August 15, 2008, only if sufficient monies are appropriated to fully fund the provisions.

(Amends R.S. 35:1, 191(A)(1) and (2), (C) and (E), 199(A)(2)(b), and 201(A)(1) and (B); Adds R.S. 35:2(C), 191.3(A) and (B), and 201(C); Repeals R.S. 44:184.2)

## 4. Duplessis (SB 709)

Act No. 677

Requires the **notary** to cause an act of sale or any other act evidencing a transfer of immovable property situated in Orleans Parish to be **registered with the office of the clerk** as the recorder for the parish of Orleans within 48 hours after the passage of the act.

Provides that the original of **every authentic act**, except chattel mortgages and acts related to immovable property outside of Orleans Parish, passed before a notary in Orleans Parish,

and also every act, contract, and instrument, except money judgments and chattel mortgages filed for record in the offices of either the recorder of mortgages or the registrar of conveyances for Orleans Parish, shall, as a condition precedent to such filing, **first be filed in the notarial archives** of Orleans Parish.

Deletes the \$500 fine for the neglect of the notary to register acts.

Effective July 1, 2008. (Amends R.S. 35:199(A)(2); Repeals R.S. 44:184.2)

## **5. McPherson (SB 51)**

**Act No. 684**

Authorizes a person who **lawfully possesses a firearm** to transport or store the firearm in a locked, privately-owned **motor vehicle** in any parking lot, parking garage, or other designated parking area.

Provides that **no property owner**, tenant, public or private employer, or business entity or their agent or employee **is liable** in any civil action for damages.

Provides that **no property owner**, tenant, public or private employer, or business entity **shall prohibit** any person from transporting or storing a firearm and that nothing shall prohibit an employer or business entity from adopting policies specifying that firearms stored in locked, privately-owned motor vehicles on property controlled by an employer or business entity be hidden from plain view or within a locked case or container within the vehicle.

Effective on August 15, 2008. (Adds R.S. 32:292.1)

## **6. Cravins (SB 423)**

**Act No. 453**

Creates the missing senior citizen and missing person with developmental disabilities alert program or "**Silver Alert**."

Effective August 15, 2008. (Adds R.S. 40:2530.1-2530.5 )

# XI. CONSTITUTIONAL AMENDMENTS

## NOVEMBER 4, 2008 BALLOT

### 1. Gallot (HB 420)

Act No. 932

**Increases the maximum amount of severance tax imposed** and collected by the state on natural resources, other than sulphur, lignite, and timber, which is remitted to the parish governing authority where the severance occurs from \$850,000 to \$1,850,000, effective July 1, 2009, and then to \$2,850,000, effective July 1, 2010.

Provides that at least 50% of the excess severance tax revenues received by a parish shall be used within the parish in the same manner and for the same purposes as money received by the parish from the Parish Transportation Fund.

Provides that, after all other severance tax allocations have been satisfied, 50% of the revenues received from severance taxes collected on state lands, not to exceed \$10 million, within the Atchafalaya Basin shall be deposited into the Atchafalaya Basin Conservation Fund. The money shall be appropriated to the Dept. of Natural Resources to fund projects contained in the state or federal Basin master plans or an annual Basin plan developed by an Atchafalaya Basin Research and Promotion Board and other advisory or approval boards which the legislature must create or provide for by law within the Atchafalaya Basin Program, or to provide match for the Atchafalaya Basin Floodway System, Louisiana Project.

Provides that 85% of the monies shall be used for water management, water quality, or access projects, and the remaining 15% may be used to complete ongoing projects and for projects that are in accordance with the mission statement of the state master plan. A maximum of 5% of the money may be allocated for operational costs.

(Amends Const. Art. VII, §4(D)(3); Adds Const. Art. VII, §4(D)(4) and (5))

### 2. Ritchie (HB 461)

Act No. 933

Relative to property owned or occupied by persons who meet certain existing requirements and who qualify for certain special assessment levels, provides that the **special assessment level on property** that is sold to or expropriated by a federal, state, or local governing authority or political subdivision **shall be transferred to the new property** of the owner entitled to the special assessment level and shall remain in effect on the new property at the same special assessment level of the property that was sold or expropriated, provided the owner entitled to the special assessment level remains the owner of the new property.

Requires that the new property be acquired no later than 24 months after the expropriation or sale becomes final and funds have been disbursed, and which is similar in nature, has a fair market value which does not exceed 200% of the fair market value of the property sold or expropriated, and is intended to replace the property sold to or expropriated.

(Adds Article VII, §18(G)(6))

### 3. Downs (HB 584)

Act No. 934

Authorizes the **investment in equities** of any monies of the state and a political subdivision reserved to provide for post-employment benefits other than pensions.

(Amends Const. Art. VII, §14(B))

### 4. Lorusso (HB 183)

Act No. 931

Requires the legislature to provide by law for the prompt and **temporary succession** to the powers and duties of a **legislator** who is unavailable to perform his functions or duties due to being ordered to active duty in the **armed services** of the U.S.

(Adds Const. Art. III, §4(F))

### 5. Mount (SB 232)

Act No. 935

Provides that **no person** who has served as a member of any of the following **boards or commissions** for more than two and one-half terms in three consecutive terms shall be appointed or elected to the board or commission for the **succeeding term**: the Public Service Commission, the State Board of Elementary and Secondary Education, the Board of Regents, Board of Supervisors for the University of Louisiana System, the LSU Board of Supervisors and the Southern University Board of Supervisors, the Board of Supervisors of Community and Technical Colleges, the State Civil Service Commission, the Forestry Commission, and the State Police Commission.

Provides that a person who has served as a member of any two or more of the above boards or commissions for more than two and one-half terms in three consecutive terms combined **shall not serve as a member of any of the above boards** or commissions for the succeeding term.

Shall not apply to any person appointed or elected to the board or commission prior to the effective date of proposed constitutional amendment, except that it shall apply to any term of service of any such person that begins after that date.

(Amends Art. IV, Sec. 21(A), Art. VIII, Sec. 3(B), 5(B), 6(B), 7(B), and 7.1(B), Art. IX, Sec. 8(B), and Art. X, Sec. 3(B) and 43(B); Adds Art. IV, Sec. 22)

### 6. Murray (SB 295)

Act No. 936

Provides an **exception** to the requirement to offer property back to the original landowner and subsequently offering the property at public sale when property is **taken for the public purpose of removal of a threat to public health or safety** caused by the existing use or disuse of the property.

(Adds Const. Art. I, §4(H)(5))

**7. Adley (SB 296)**

**Act No. 937**

Relative to **extraordinary sessions** of the legislature, requires the proclamation stating the objects of the session, the date on which it shall convene, and the number of days for which it is convened, to be issued **at least seven calendar days prior to the convening** of the legislature in extraordinary session.

(Amends Const. Art. III, Sec. 2(B))



**2008 FIRST EXTRAORDINARY SESSION**  
**(with major changes from 2008 Regular Session)**

**ETHICS**

**1. Tucker (HB 1)**

**Act No. 1**

Requires certain public officials to file **annual financial disclosure statements**. Provides three levels of financial reporting, informally referred to as "tiers". Tier 1 applies to statewide elected officials, the secretary or chief executive of each department of state government, and certain other executive branch officials. Tier 2 applies to: (1) members of the state legislature; (2) persons holding a public office who represent a voting district having a population of 5,000 or more persons; (3) members of the Board of Ethics and the ethics administrator; (4) members of the State Board of Elementary and Secondary Education; (5) members of a state board or commission who receive a salary or other compensation for public service of \$16,800 or more per year; and (6) members of a state board or commission which has the authority to expend, disburse, or invest \$1,000,000 or more of funds in a fiscal year. Tier 3 covers persons holding a public office who represents a voting district having a population of fewer than 5,000 persons and members of a state board or commission which has the authority to expend, disburse, or invest more than \$10,000 but less than \$1,000,000.

Requires a candidate to file a financial statement for the office for which he is running within 10 days of the time the person becomes a candidate, a status which may be assumed when the person takes certain actions, including accepting contributions, making expenditures, or qualifying for the election.

Provides additional disclosures for members of the **Board of Ethics**.

The financial statements are **public records** subject to the public records law.

Provides **late fines** for failing to report or failing to accurately report required information, which may be imposed following a 14-day delinquency notice procedure. The Board of Ethics is required to post a list of delinquent filers. Also provides **criminal penalties** for certain knowing and willful failures.

Effective January 1, 2009, except provisions concerning R.S. 42:1124.3 (Tier 3) become effective January 1, 2010. (Amends R.S. 42:1124, 1124.1, 1157(A)(4)(a); Adds R.S. 18:1495.7 and R.S. 42:1124.2, 1124.3, 1124.4, and 1124.5; Repeals R.S. 18:463(B) and R.S. 42:1114.1)

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**AS AMENDED DURING THE 2008 REGULAR SESSION:**

**Gallot (HB 842)**

**Act No. 162**

Expressly provides that a candidate is required to file a financial disclosure statement when he is a candidate for an office for which the holder of the office is required to file certain financial disclosure statements. **Changes the deadline** for candidates to file financial statements from within 10 days of becoming a candidate to within 10 days of filing the notice of candidacy. Provides that **designees** of members of certain boards **must file financial disclosure statements**. Limits the applicability of financial disclosure provisions to those persons holding covered offices or positions on or after July 1, 2008.

(Amends R.S. 18:1495.7(A) and R.S. 42:1124(A)(1), (C)(8), and (D)(2), 1124.2(A) and (C)(5)(b), (c), and (d) and (8), 1124.3(A), and 1124.4(D)(1)(a) and §6 of Act No. 1 of the 2008 1st ES of the Legislature; Adds R.S. 42:1124.3(D)(3) and §7 of Act No. 1 of the 2008 1st ES of the Legislature)

**Martiny (SB 718)**

**Act No. 472**

Provides a **new "Tier 2.1"** to require financial disclosure for most boards and commissions, including those of political subdivisions of the state with certain **exceptions**. Requires members (and designees) of boards and commissions which expend, disburse, or invest \$10,000 or more in a fiscal year (except those who file in Tier 1 or 2), and members of the State Civil Service Commission and of the Board of Commissioners of the La. Stadium and Exposition District to file annual financial disclosure statements; provides relative to penalties.

Removes the requirement that members of a state board or commission which has the authority to expend, disburse, or invest \$1 million or more in a fiscal year or who receive \$16,800 or more in annual compensation for public service report pursuant to Tier 2. Removes the requirement that members of a state board or commission which has the authority to expend, disburse, or invest between \$10,000 and \$1 million report pursuant to Tier 3. Further, provides that persons reporting in Tier 2 report "mailing address" rather than "residence address".

(Amends R.S. 42:1124.1(A)(1) and (B), 1124.2(A) and (C)(1), 1124.3(A), 1124.4(A)(1), (C)(3), and (F), 1125(B) and (C), and 1157(A)(4)(a)(ii); Adds R.S. 42:1124.2.1; Repeals R.S. 42:1124.2(G)(4))

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Prohibits legislators, statewide elected officials, certain executive branch officials, the Board of Ethics, and the ethics administrator, along with spouses and certain legal entities of such officials, from **entering into any contract with state government**. Also prohibits immediate family members (other than spouses) of officials and certain affiliated legal entities from entering into a contract with state government unless it is **publicly bid or competitively negotiated** through a request for proposal process in accordance with law. This applies to former officials for a period of one year following termination of public service. Reporting of allowed contracts with state government is required annually by July 1 of each year.

A number of **exceptions** are provided, including actions taken to comply with state law, certain retail sales, public assistance benefits, admission fees for events open to the public, certain contracts for employment by a licensed health care professional, and agreements for the provision of services by state government provided on the same terms and conditions available to similarly situated persons. The law provides for completion and renewal of certain contracts.

Subject to exceptions, also prohibits statewide elected officials, legislators, and certain executive branch officials from entering into certain **disaster contracts** funded with federal money appropriated by the state, and requires reporting of disaster contracts funded with federal money.

Effective March 3, 2008. (Amends R.S. 42:1113(A) and (D) and 1114.3; adds R.S. 42:1113(E))

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**AS AMENDED DURING THE 2008 REGULAR SESSION:**

**Adley (SB 667)**

**Act No. 696**

**Adds deputy secretaries, undersecretaries, and assistant secretaries, or equivalent positions, of state agencies** to the prohibitions against and limitations on **contracting with state government** (R.S. 42:1113). Also adds the following: the assistant commissioner for management and finance, the deputy commissioner, the confidential assistant, and each assistant commissioner of the Dept. of Agriculture and Forestry; the superintendent of education, the deputy superintendent of education, the deputy superintendent for management and finance, and each assistant superintendent of the Dept. of Education; the chief deputy commissioner, each deputy commissioner, the assistant commissioner, and the executive counsel of the Dept. of Insurance; the first assistant attorney general of the Dept. of Justice; the deputy secretary of the Dept. of State, the deputy secretary for the office of the Uniform Commercial Code, and the deputy secretary for the office of GeauxBiz or his successor; and each deputy state treasurer and each assistant state treasurer of the Dept. of the Treasury. Provides that present law prohibitions and

limitations regarding contracting with state government do not apply to the spouses and other immediate family members of deputy secretaries, undersecretaries, and assistant secretaries, or equivalent positions of certain state agencies.

(Amends R.S. 42:1113(D)(1)(a); adds R.S. 42:1113(D)(6))

### **Chaisson (SB 769)**

### **Act No. 514**

Relative to the ban on contracts with state government, rewords and reclassifies certain exceptions from "not prohibited" to "not contracts". Removes the exception for agreements for the provision of goods or services by state government. Removes certain redundant exceptions for completion of certain contracts and an exception for actions taken to comply with a state law, rule, or regulation. Provides that an annual report of allowed contracts be filed on May 15 of each year, complete for the preceding calendar year, but that the first report is due by May 15, 2009, complete for Mar. 3, 2008, through Dec. 31, 2009.

(Amends R.S. 42:1113(D)(1)(a)(iii) and (iv) and (c), (2), (3) and (4), 1114.3(A)(1), (2), (4), and (5), (B), and (C)(3), 1115.1(D) and (E), 1123(13) and (39)(a), 1125(B) and (C); Adds R.S. 42:1113(D)(5), 1115.1(F), and 1119(C)(7) and 1123(41); and Repeals R.S. 42:1113(E))

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### **3. Tucker (HB 6)**

### **Act No. 3**

Requires each elected official to receive **one hour of ethics education** and training during **each year** of his term of office, and **one hour of Campaign Finance Disclosure Act education** and training **each term**. Requires a newly elected official to receive at least one hour in the first 90 days of office. Applicable to statewide elected officials, legislators, and public service commissioners and will be applicable to all other elected officials beginning January, 2010. Beginning in 2009, requires each lobbyist to receive training on the lobbyist disclosure laws and the applicable provisions of the ethics code. Beginning in 2012, requires every public servant to receive at least one hour of ethics training during each year of public employment or service.

Effective April 26, 2008. (Amends R.S. 42:1170(A) and (E))

### **4. Tucker (HB 7)**

### **Act No. 4**

**Limits contributions** to a gubernatorial transition and inauguration from any one person to \$10,000.

Effective April 26, 2008. (Amends R.S. 42:1125(A))

## 5. Tucker (HB 8)

Act No. 5

Protects from **threats of discipline or reprisal** a public employee who reports what he believes indicates a violation of any law, order, rule, or regulation or any other alleged act of impropriety related to the scope or duties of public employment or public office.

Effective April 26, 2008. (Amends R.S. 42:1169)

## 6. Champagne (HB 22)

Act No. 6

Relative to **nepotism**, provides that an agency head, a member of a governing authority, or a chief executive is subject, **regardless of whether or not he is an immediate family member** of the employee, to penalties for **willfully** participating in the employment of an immediate family member of another official if the employment would violate the nepotism statute.

Effective April 26, 2008. (Amends R.S. 42:1119(D))

## 7. Leger (HB 23)

Act No. 7

Relative to the prohibition of a public servant **receiving any thing of economic value**, provides for an **exception** to allow public servants to accept **free legal services** donated by an attorney pursuant to a program adopted by the Louisiana Bar Association. Provides that the program shall be certified by the association to the Board of Ethics.

Effective April 26, 2008. (Adds R.S. 42:1123(38))

## 8. Chaisson (SB 5)

Act No. 8

Requires an elected official to **recuse himself from voting** on a matter that would be a violation of ethics code provisions prohibiting participation in certain transactions which involve his governmental entity and in which he or an affiliated person or legal entity has a substantial economic interest. However, **allows** an elected official to participate in **discussion and debate** concerning the matter if he **verbally discloses** the nature of his conflict or potential conflict **during discussion and debate** and **prior to any vote taken** on the matter.

Effective March 6, 2008. (Amends R.S. 42:1120)

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**AS AMENDED DURING THE 2008 REGULAR SESSION:**

**Connick (HB 762)**

**Act No. 159**

Replaces the requirements of SB5 / Act No. 8 with the requirements that he make the conflict or potential conflict a **part of the record** of his agency **prior to participating** in discussion or debate and **prior to the vote that is the subject of discussion or debate**.

Effective June 12, 2008. (Amends R.S. 42:1120)

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**9. Chaisson (SB 8)**

**Act No. 9**

Provides a **limit on the value of food, drink, and refreshment** certain persons are allowed to give to a public servant. Restricts the value of food, drink, or refreshment to no more than \$50 for a single event. Requires the Board of Ethics to adjust the \$50 limit in accordance with increases in the Consumer Price Index. Provides that the value given at an event to which a group or organization of public servants is invited shall be determined by dividing the cost by the number of invitees. The limitation does not apply to a gathering held in conjunction with a meeting of a national or regional organization or a meeting of a statewide organization of governmental officials or employees.

Effective March 30, 2008. (Adds R.S. 42:1115.1)

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**AS AMENDED DURING THE 2008 REGULAR SESSION:**

**Chaisson (SB 769)**

**Act No. 514**

Defines "event" and provides an exception for the participation in a post-secondary education institution at an event held for the purposes of soliciting donations for the benefit of that public servant's agency.

(Amends R.S. 42:1113(D)(1)(a)(iii) and (iv) and (c), (2), (3) and (4), 1114.3(A)(1), (2), (4), and (5), (B), and (C)(3), 1115.1(D) and (E), 1123(13) and (39)(a), 1125(B) and (C); Adds R.S. 42:1113(D)(5), 1115.1(F), and 1119(C)(7) and 1123(41); and Repeals R.S. 42:1113(E))

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## 10. Tucker (HB 29)

Act No. 10

Requires that **at least three of the governor's appointees to the Board of Ethics be attorneys with at least eight years of experience.** Provides for resignation if eligibility requirements are not maintained. Requires the ethics board staff to certify before the new member can attend a meeting or participate as a member that each newly appointed ethics board member has completed a training program regarding the provisions of law under the jurisdiction of the board.

Effective April 26, 2008. (Amends R.S. 18:1483(14)(b) and 1505.2(O); Adds R.S. 18:1483(14)(c), 1501.2, and 1505.2(I)(4))

## 11. Peterson (HB 33)

Act No. 11

Requires **persons designated** by a state agency to provide ethics information to the public servants in that agency to have at least **two hours of ethics education** and training. Requires at least one of those designees in each state executive branch department to be an attorney.

Effective April 26, 2008. (Amends R.S. 42:1170(C))

## 12. Tucker (HB 56)

Act No. 12

**Creates the office of the state inspector general in the executive branch** of state government to examine and investigate waste, inefficiencies, mismanagement, misconduct, abuse, fraud, and corruption in the executive branch. Requires the inspector general to receive certification as a Certified Inspector General from the Association of Inspectors General. Provides that the inspector general is appointed for a six-year term, subject to removal by the governor with concurrence of the legislature.

Effective April 26, 2008. (Amends R.S. 44:4.1(B)(31); Adds R.S. 36:4(I) and R.S. 49:220.21-220.25)

## 13. Chaisson (SB 11)

Act No. 13

Requires executive branch and legislative branch **lobbyists to electronically register and report monthly lobbying expenditures** on officials and employees and on an official's spouse and minor child. Requires a lobbyist to **disclose any business relationship** that he or his employer (or principal) has or had with the official or his spouse during the previous 12 months. Requires a lobbyist to report lobbying income by ranges of value and list each subject matter about which he lobbies.

Allows an **immediate family member** of a legislator to be a registered lobbyist **if the person was a registered lobbyist for one year prior to becoming a family member of the legislator** or one year prior to the initial election of the legislator. Prohibits the lobbyist from lobbying the legislator or communicating with any public employee assigned to the district office of the legislator, any public employee whose primary duty is to assist the individual

legislator, or, if the legislator is a chairman, any public employee assigned to his committee concerning any matter which may be the subject of action by the legislature.

Effective January 1, 2009. (Amends R.S. 24:51(2), 53(A), (G), and (H), 54(A)(2), and 55, and R.S. 49:72(5), 74(A), (E), and (F), 75(A)(2), and 76; Adds R.S. 24:51(7), 57(3), and 58(D)(3), (4), and (5), R.S. 42:1123(38), and R.S. 49:77(4), and 78(D)(3), (4), and (5))

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**AS AMENDED DURING THE 2008 REGULAR SESSION:**

**Crowe (SB 499)**

**Act No. 769**

**Redefines the term "lobbyist"** for purposes of lobbying the legislature as any person who is employed or engaged for compensation to act in a representative capacity for the purpose of lobbying if lobbying constitutes one of the principal duties of the employment or engagement or any person who acts in a representative capacity and makes an expenditure. Defines "principal duty" as any duty which is expected to account for 20% or more of a person's time in fulfilling the terms of his engagement or any duty which is expected to account for 20% or more of a person's time in any given year in performing the responsibilities of his employment. **Excludes** from the definition any person who does not make or have any direct communication with a legislator for the purpose of influencing the passage or defeat of legislation. Further, excludes from the application an elected official or designee when the designee is a public employee and when the elected official or public employee is acting in the performance of his official public duties.

Defines "lobbyist" for purposes of **lobbying the executive branch** as any person who acts in a representative capacity and makes an expenditure.

**Chaisson (SB 769)**

**Act No. 514**

Relative to lobbying, provides an exception for a family member who was a registered lobbyist for at least one year prior to the effective date of Act 13 of the 2008 First Extraordinary Session.

(Amends R.S. 42:1113(D)(1)(a)(iii) and (iv) and (c), (2), (3) and (4), 1114.3(A)(1), (2), (4), and (5), (B), and (C)(3), 1115.1(D) and (E), 1123(13) and (39)(a), 1125(B) and (C); Adds R.S. 42:1113(D)(5), 1115.1(F), and 1119(C)(7) and 1123(41); and Repeals R.S. 42:1113(E))

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#### 14. Marionneaux (SB 14)

Act No. 14

Defines "electioneering communication", provides more stringent restrictions relative to **campaign materials, statements, and disclosures as to any third party responsible for payment**, and provides that whenever any person, political committee, entity, or organization makes a disbursement for the purpose of the financing of any electioneering communication, such must comply with the following:

- (1) If the communication is paid for and authorized by a candidate, an authorized political committee of a candidate, or its agents, it shall clearly state that the communication has been paid for by such authorized political committee. Provides that the name of the political committee paying for the communication shall be given in full and no acronyms shall be used.
- (2) If the communication is paid for by other persons, but authorized by a candidate, an authorized political committee of a candidate, or its agents, it shall clearly state that the communication is paid for by such other persons and authorized by such authorized political committee. Provides that the name of the authorized political committee shall be given in full and no acronyms shall be used.
- (3) If the communication is not authorized by a candidate, a political committee of a candidate, or its agents, it shall clearly state the name, physical address, and telephone number, and the world-wide web address (if available) of the person, committee, entity, or organization who paid for the communication and state that the communication is not authorized by any candidate or candidate committee. Requires that the name of the payer be given in full and no acronyms used.

Effective January 1, 2010. (Amends R.S. 18:1463(C)(2) and (E) and 1505.3(D)(3); adds R.S. 18:1463(C)(4) and (F))

#### 15. Chaisson (SB 35)

Act No. 15

**Prohibits** a public servant or other person from **transferring any thing of economic value** or any asset, interest, or liability to any person or governmental entity for the purpose of circumventing any provision of the ethics code, **unless the transfer is irrevocable**. Specifies that a transfer shall not be irrevocable if there exists any legally enforceable agreement or authority which if exercised or enforced would require or authorize any asset, interest, or liability transferred by the public servant or other person to revert back to the public servant or other person.

Effective March 7, 2008. (Adds R.S. 42:1117.1)

**16. Greene (HB 65)**

**Act No. 16**

Requires each candidate for public office to **certify that he does not owe any outstanding ethics fine, fee, or penalty** at the time of filing his notice of candidacy. Requires the Board of Ethics to bring an action or join an action objecting to the candidacy of any person who falsely certifies such fact.

Effective January 1, 2009. (Amends R.S. 18:463(A)(2) and 491(C); Adds R.S. 18:492(A)(6))

**17. White (HB 73)**

**Act No. 17**

Requires each person and political committee required to file **campaign finance disclosure reports** that receives contributions or loans in excess of \$50,000 in a calendar year or which makes expenditures in excess of \$50,000 in a calendar year, other than a candidate or an authorized political committee of a candidate or a political committee of a recognized political party, to file all reports required by the **Campaign Finance Disclosure Act electronically**.

Effective July 1, 2009. (Adds R.S. 18:1485(E))

**18. Morrell (HB 80)**

**Act No. 18**

Provides relative to certain **investigative powers and subpoena powers** of a local ethics entity, local ethics review board, or office of inspector general located in a municipality with a population in excess of 250,000 persons and governed by home rule charter.

Effective April 26, 2008. (Adds R.S. 33:9611-9614)

**19. Chaisson (SB 3)**

**Act No. 19**

Replaces the general exception to the ethics code which allowed elected officials to receive certain things of economic value related to **cultural and sporting events** with a new, more restrictive provision which allows an elected official to accept complimentary admission to certain events as follows:

(1) A civic, nonprofit, educational, or political event if the elected official is a program honoree, a speech presenter, or a panel member.

(2) A fishing trip, hunting trip, or golf outing if such trip or outing is associated with a candidate's, elected official's, or organization's fundraising event open to the general public and the elected official is a program honoree, a speech presenter, or a panel member at such event, trip, or outing.

Specifically prohibits admission to any professional, semiprofessional, or collegiate sporting event and any fishing trip, hunting trip, or golf outing except as allowed in (2) above.

Effective March 10, 2008. (Amends R.S. 24:51(2), 42:1123(13), and R.S. 49:72(5))

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**AS AMENDED DURING THE 2008 REGULAR SESSION:**

**Chaisson (SB 769)**

**Act No. 514**

Relative to complimentary admission to **cultural and sporting events**, **allows a public servant to accept complimentary admission** to a civic, nonprofit, educational, or political event when the public servant is a program honoree, is a speech presenter, or is a panel member. Further authorizes a public servant to accept complimentary admission to a fundraising event for a candidate or political party. Retains provisions that the exceptions do not apply to admission to any professional, semi-professional, or collegiate sporting event.

Further provides an exception under certain circumstances for the acceptance by a public servant of complimentary admission to, lodging reasonably related to, and reasonable transportation to and from an educational or professional development seminar or conference.

(Amends R.S. 42:1113(D)(1)(a)(iii) and (iv) and (c), (2), (3) and (4), 1114.3(A)(1), (2), (4), and (5), (B), and (C)(3), 1115.1(D) and (E), 1123(13) and (39)(a), 1125(B) and (C); Adds R.S. 42:1113(D)(5), 1115.1(F), and 1119(C)(7) and 1123(41); and Repeals R.S. 42:1113(E))

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**20. Chaisson (SB 37)**

**Act No. 20**

Requires the **commissioner of administration** to establish and maintain a **website to post reports of state spending**. Requires that the reports include the nature and amount of appropriations for the executive branch of state government contained in the General Appropriation Act and other acts for each budget unit, annual salaries and total compensation of statewide elected officials and cabinet-level positions in the executive branch of state government, and the total number in the table of organization for each budget unit. Further requires the commissioner to maintain on the website a monthly report of spending by each such budget unit. Requires the commissioner of administration to consult with the Joint Legislative Committee on the Budget in the development of the specifications for the database used for the website.

Requires that reports posted on the website shall be complete and inclusive of all budget units no later than Jan. 1, 2009.

Effective March 10, 2008. (Adds R.S. 39:6(C))

## **21. Murray (SB 53)**

## **Act No. 21**

Increases penalty for the **crime of corrupt influencing** from imprisonment for not more than five years with or without hard labor or a fine of not more than \$5,000 or both, to imprisonment of not more than 10 years with or without hard labor, a fine of not more than \$10,000, or both.

Effective March 11, 2008. (Amends R.S. 14:120)

## **22. Martiny (SB 58)**

## **Act No. 22**

Provides that no public officer or public employee shall **knowingly and intentionally** use the authority of his office or position, directly or indirectly, to **compel or coerce** any person to provide the public officer, public employee, or any other person with anything of **apparent present or prospective value** when the public officer or employee is not entitled by the nature of his office to the services sought or the object of his demand.

Requires that violators to be fined up to \$5,000 or imprisoned with or without hard labor for not less than one year nor more than five years.

Effective March 11, 2008. (Adds R.S. 14:134.3)

## **23. Tucker (HB 41)**

## **Act No. 23**

Creates the **Ethics Adjudicatory Board** to conduct public hearings on those matters which the Board of Ethics, after an investigation, has determined should be adjudicated. The Ethics Adjudicatory Board is comprised of seven administrative law judges randomly selected by the director of the division of administrative law to serve one-year terms. Provides that the adjudicatory board sits in rotating, three-judge panels. Provides that if the adjudicatory panel determines that a violation has occurred, it also prescribes penalties or other sanctions. The law requires the Board of Ethics to issue a decision adopting the decision of the adjudicatory panel within 45 days.

Effective August 15, 2008. (Amends R.S. 42:1141(C), (D), (E), and (F); Adds R.S. 49:992.1 and 994(E))

**24. Connick (HB 74)**

**Act No. 24**

Provides for a process of **declaratory opinions** of the board, which opinions can be appealed. Provides for procedures for obtaining such opinions. Provides for matters on which the board may render declaratory opinions. Provides for circumstances in which the board may refuse to issue such opinions.

Effective March 14, 2008. (Amends R.S. 42:1142(A); Adds R.S. 42:1141.1)

**25. Leger (HB 78)**

**Act No. 25**

Relative to **campaign finance reporting**, makes requirement for **electronic filing** of contribution and expenditure reports applicable to a candidate for a major or district office; previously the requirement applied only to a candidate for statewide office. Also phases out the \$50,000 threshold on the requirement for electronic filing. From Jan. 1, 2010, until Dec. 31, 2011, the threshold is \$25,000; thereafter there is no such threshold.

(Amends R.S. 18:1485(C))

**26. Marionneaux (SB 29)**

**Act No. 26**

**Defines all 26 U.S.C.A. §527(e)(1) organizations as "political committees"** for purposes of the **Campaign Finance Disclosure Act** and requires such organizations to file the same reports as required for political committees regarding contributors, the amount of contributions, and expenditures. Also requires §527 organizations to file reports during the period beginning at midnight of the 20th day prior to an election and extending through midnight of election day containing the full name and address of each person from whom the political organization has received and accepted a contribution or to whom such organization has made an expenditure during such period in excess of \$250 within 48 hours of such contribution or expenditure.

Effective April 26, 2008. (Amends R.S. 18:1483(14)(b) and 1505.2(O); adds R.S. 18:1483(14)(c), 1501.2, and 1505.2(I)(4))

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**AS AMENDED DURING THE 2008 REGULAR SESSION:**

**Connick (HB 371)**

**Act No. 821**

**Prohibits a candidate** and the principal or any subsidiary political committee of a candidate from using a contribution, loan, or transfer of funds received by such candidate or committee to make any payment or expenditure **to any immediate family member** of the candidate. Defines "immediate family member" as the candidate's children, the spouses of his children, his brothers and their spouses, his sisters and their spouses, his parents, his spouse, and the parents of his spouse. Provides certain exceptions.

Removes present law provisions which define a political organization as defined in 26 U.S.C.A. 527(e)(1) as a "political committee" for purposes of the Campaign Finance Disclosure Act. Removes present law provisions which specifically require a political organization as defined in 26 U.S.C.A. 527(e)(1) to file certain additional reports pursuant to the Campaign Finance Disclosure Act.

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## 27. Adley (SB 47)

## Act No. 27

Requires each person, other than a candidate or political committee, who **makes an expenditure for purposes of canvassing** to submit in writing to the candidate or political committee on whose behalf such expenditure was made the **name, address, and the last four digits of the social security number** of each individual to whom such an expenditure was made. Provides that it is a **felony** for any person to commit an intentional violation of the requirement, subject to a fine of not more than twice the amount of such expenditure or compensation or imprisonment, with or without hard labor, for not more than five years, or both.

Effective March 30, 2008. (Amends R.S. 18:1501.1(A), 1505.2(O), and 1511.6(A); adds R.S. 18:1483(9.1), 1505.2(I)(4) and 1505.6(D))

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